DOCUMENT RESUME

ED 285 268 EA 019 612

AUTHOR Karns, Jack E.
TITLE Negligence on the Playing Field: Determining the Scope of Legal Liability. North Dakota Economic Studies, Number 42.
INSTITUTION North Dakota Univ., Grand Forks. Bureau of Business and Economic Research.
PUB DATE May 86
NOTE 98p.
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS Administrator Role; *Athletes; Board of Education Policy; *Compliance (Legal); Contracts; *Court Litigation; Government School Relationship; *Injuries; Legal Responsibility; School Personnel; Secondary Education; State Standards; State Surveys; Student Rights; Student School Relationship; *Team Sports; Torts
IDENTIFIERS *Negligence; *North Dakota

ABSTRACT

In recent years the number of lawsuits brought by injured secondary school athletes alleging negligence on the part of coaches, school officials, and referees has risen dramatically. This study analyzes the legal liability implications for administrators and others involved in school sports in North Dakota. An introductory section describes research objectives and methodology. The sports negligence claim and what constitutes a case are discussed in section 2, "Establishing the Tort Claim in Sports Cases." Section 3, "Liability for Secondary School Sports Injuries--A National Perspective," surveys national case law to demonstrate parameters of negligence liability for districts and officials. Analysis includes the employment relationship between parties to a lawsuit and examples of potentially negligent conduct. "Regulation of Secondary School Sports in North Dakota," section 4, discusses state regulatory methods. The role of the state high school activities association in competitive sports administration is detailed. The final section, "Survey Results," summarizes the study's statewide survey of public and private secondary school superintendents, head football coaches, and football officials. Questionnaires assessed litigation experience, insurance coverage, reactions to claims, preventive measures, and contractual relationships. A conclusion offers suggestions for district protection from unnecessary lawsuits. The report provides 11 tables of survey data; 7 appendices include examples of contracts and survey instruments. (CJH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED285268

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Jack E Karns

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EA 019 612

Bureau of Business and Economic Research
University of North Dakota
North Dakota Economic Studies, Number 42

NEGLIGENCE ON THE PLAYING FIELD:

DETERMINING THE SCOPE OF LEGAL LIABILITY*

Jack E. Karns
Assistant Professor of Accounting and Business Law

ABSTRACT

In recent years the number of lawsuits brought by injured secondary school athletes alleging negligence on the part of coaches, school officials, and referees has risen dramatically. Such litigation has prompted serious questions and reappraisals of the total liability assumed by those individuals associated with secondary school sports in this country.

The State of North Dakota has witnessed at least one case in which a school district was a defendant in a sports injury case. This case has made it clear that the issue of negligence liability for secondary school sports injuries must be given increased attention. Otherwise, the negative backlash effect could include the elimination of sporting competition and the withdrawal of persons, such as referees and coaches, from active participation in secondary school sports programs.

* An expanded version of this study will be published in an upcoming issue of the University of North Dakota Law Review.

TABLE OF CONTENTS

LIST OF TABLES iv

LIST OF FIGURES iv

ACKNOWLEDGEMENTS v

I. INTRODUCTION 1
   A. Research Objectives
   B. Research Methodology

II. ESTABLISHING THE TORT CLAIM IN SPORTS CASES 6
   A. Definition of a Tort
   B. Intentional Torts
   C. Reckless Misconduct
   D. Negligence
      1. Duty of Care Owed to an Athlete
         a) Common Law Duty
         b) Contractual Duty
         c) Statutory Duty
      2. Breaching the Duty of Care
      3. Causation and Injury
      4. Defenses to a Negligence Claim

III. LIABILITY FOR SECONDARY SCHOOL SPORTS INJURIES - A NATIONAL PERSPECTIVE 28
   A. Doctrine of Respondeat Superior
   B. Liability of School Districts and Administrators
   C. Liability of Coaches
   D. Liability of Officials

IV. REGULATION OF SECONDARY SCHOOL SPORTS IN NORTH DAKOTA . 44
   A. The National Federation of State High School Associations
   B. The North Dakota High School Activities Association (NDHSAA)
      1. Early History- The North Dakota High School League
      2. Organization and Classification of Schools
      3. Administration
   C. NDHSAA Regulation of Sporting Events
   D. NDHSAA Regulation of Sports Officials

V. SURVEY RESULTS 59
   A. Survey Scope and Format
   B. Survey Summary

VI. CONCLUSION 72

VII. APPENDICES

A CLASS B DISTRICT COMMITTEES 76

B NDHSAA UNIFORM CONTRACT 79

C FOOTBALL COOPERATIVE AGREEMENTS 80

D NDHSAA CONTRACT FOR OFFICIALS 81

E SCHOOL SUPERINTENDENT QUESTIONNAIRE 82

F FOOTBALL COACH QUESTIONNAIRE 85

G FOOTBALL OFFICIAL QUESTIONNAIRE 88

LIST OF TABLES

TABLE 1 SUMMARY OF SURVEY RESPONDENTS 60

TABLE 2 TOTAL NDHSAA SECONDARY SCHOOL FOOTBALL TEAMS . . . 61

TABLE 3 RESPONDENT OFFICIALS LICENSED IN OTHER SPORTS . . 62

TABLE 4 CONTRACTING SPORTS OFFICIALS 63

TABLE 5 QUALITY OF OFFICIATING 64

TABLE 6 ADEQUATE NUMBER OF OFFICIALS AVAILABLE 65

TABLE 7 TALKED WITH PEERS REGARDING LEGAL LIABILITY . . . 66

TABLE 8 EMPHASIS ON LEGAL LIABILITY 67

TABLE 9 AWARE OF SPORTS INJURY LAWSUIT IN NORTH DAKOTA . . 68

TABLE 10 WITNESSED INCIDENT POSING THREAT OF NEGLIGENCE LAWSUIT 69

TABLE 11 INCIDENTS POSING THREAT OF NEGLIGENCE LAWSUIT . . 70

LIST OF FIGURES

FIGURE 1 CLASS A REGIONS - BOARD OF DIRECTORS 74

FIGURE 2 CLASS B REGIONS - BOARD OF DIRECTORS 75

ACKNOWLEDGEMENTS

The author is very grateful to all individuals who assisted in the conduct of this study by participating in the statewide survey. The project could not have been completed without the help of the superintendents, football coaches, and football officials who willingly gave of their time to complete the survey instrument.

Several individuals who agreed to personal interviews deserve special recognition. Mr. Bob King, Assistant Executive Secretary of the North Dakota High School Athletic Association (NDHSAA), provided insights as to the history of the NDHSAA, and highlighted the secondary school sports in North Dakota. Mr. King's staff also provided other valuable research information requested on several occasions by the author. Dr. Mark S. Sanford, Superintendent of Grand Forks Public Schools and current member of the NDHSAA Board of Directors, assisted this research effort by clarifying the school classification system and the overall role of the Board and District Committees in governing secondary school sports in the State.

The author also gratefully acknowledges the funding provided for this study by the University of North Dakota Bureau of Business and Economic Research and the assistance rendered by Larry Dobesh, Bureau Director, in seeing this project through to a successful conclusion. Recognition is also accorded the staff personnel of the Eddy County (New Rockford) Clerk of Court office and the United States District Court Clerk in Fargo for their

assistance in making the records of the Preuse and Harding cases available for review by the author. Finally, the author owes a special thanks to Ms. Lori Hoglund for her typing and editing assistance.

I. INTRODUCTION

A. RESEARCH OBJECTIVES

The number of lawsuits based on secondary school sports injuries has been increasing at an alarming rate during the past decade. This development has caused those persons involved in all aspects of school sports to reassess their individual vulnerability to a claim of negligence by an injured athlete. In recent litigation injured athletes have sued everyone associated with the local school district to include the superintendent, principal, coaches, and officials, as well as equipment manufacturers where appropriate.

The one thing that is clear from these lawsuits is that coaches, officials, and equipment manufacturers have been the primary parties sued by injured athletes; and this is clearly based on their closeness to physical contact on the field of play. The vulnerability of the school district and its administrative officials rests with the argument that coaches and officials are employees of the district, and that under the doctrine of respondeat superior, responsibility for the negligent conduct of an employee is shifted to the employer.[1]

---

1 "The general rule is that a master is liable for the unauthorized torts of his servant committed while the servant is acting within the scope of his employment. Where the master-servant relationship is shown to exist, the master is strictly liable for the torts of his servant within that scope. This doctrine is variously called 'respondeat superior' or 'vicarious liability' since it is said that the servant's tortious conduct is imputed to his master." SELL ON AGENCY, W. Edward Sell, 1st edition, p. 84, hereinafter referred to as SELL. See also AGENCY AND PARTNERSHIP, Reuschlein and Gregory, 1st edition, pp. 101-04, hereinafter referred to as Reuschlin and Gregory.

The doctrine of respondeat superior is based on the premise that an employer is better able to bear the costs resulting from an employee's negligent acts. Practically speaking, what this has meant to injured sports plaintiffs is that the varied assets and resources of the school district are within reach either in working out a settlement or in proving damages in a court of law.

Courts in a number of states have addressed this problem, have rendered verdicts favoring the injured plaintiff-athlete, and have included in their opinions strong language regarding a school district's responsibility to athletes. The following from a 1968 case in the State of Washington is representative:

> In the present case, it is clear that the wrestling matches were conducted 'under the auspices' of the respondent school districts. That the school districts actively encourage participation by students in such sports programs is beyond question. The schools provide coaches for the training of participants. They provide the premises upon which such activities are engaged in by the students and the equipment which is used in the wrestling matches . . . .
>
> We feel the duty owed the student participants in this wrestling match, under the facts of this case, is similar to that imposed upon the school districts while the students are in involuntary attendance during

school hours, i.e. a duty to provide non-negligent supervision, . . .[2]

Based on this reasoning the appeals court reversed a jury verdict for the defendant school districts and directed that a new trial be conducted in accordance with its decision that a duty was owed by the school districts to the injured athlete.

Even though there is only one reported court decision in North Dakota at the present time where an injured athlete has made such a negligence claim[3], it is obvious that school districts, as well as all other persons involved with amateur school sports in this state, must be prepared for such a possibility. This study will analyze the legal liability implications for those persons who today play an integral role in the administration of school sports in North Dakota.

B. Research Methodology

To accomplish the above stated objectives this research study was broken into four sub-component parts. The first discusses the sports negligence claim and details exactly what an injured plaintiff athlete must prove in order to successfully establish such a case. Next, a survey of national case law is presented to demonstrate the parameters of negligence liability currently applicable to school districts and administrators,

---

2 Carabba v. Anacortes School District No. 103, 435 P.2d 936 (1968).

3 See infra notes 124-125 and accompanying text.

coaches, and officials. This section will discuss the employment relationship between the relevant parties to a sports negligence lawsuit and will provide examples of the type of negligent conduct that may lead to a lawsuit.

The third section discusses how secondary school sports are regulated within the State of North Dakota. Specifically, the role of the North Dakota High School Activities Association (NDHSAA) is covered in detail relative to how it administers not only competitive sports within the state, but also the manner in which it oversees the approximately twelve hundred sports officials licensed by the Association. In the final section the results of a statewide survey are presented in summary form. A separate questionnaire was developed and sent to 1) the superintendent of every secondary school, public and private, that is a member of the NDHSAA,[4] 2) every head varsity football coach at a NDHSAA member school,[5] and 3) every football official registered with and licensed by the NDHSAA.[6] The sport of

---

[4] The names of superintendents and school addresses were taken from the NDHSAA Directory of Members (sic) Schools, 1985-86 (hereinafter referred to as Directory). Two-hundred forty-one high schools belong to the NDHSAA.

[5] A listing of head varsity football coaches was also derived from the Directory. One-hundred ninety of the NDHSAA member schools participate in varsity football. There are 96 schools which field their own football team, 35 two school co-ops, and 8 three school co-ops for a total of 139 secondary school football teams.

[6] A list of all sports officials registered for the 1985-86 year was provided by the NDHSAA. Three hundred fifty-nine officials were registered and licensed to officiate football. The author is a NDHSAA registered football official and was excluded from the survey.

football was chosen since it is the most prevalent contact sport played in North Dakota.

The questionnaires were designed to assess the current perceptions of those individuals most directly involved in secondary school sports in North Dakota. School superintendents were surveyed to ascertain:

1) whether the district has ever been a defendant in a sports related injury case based on a negligence claim.

2) what type of insurance coverages the district carries to cover such sports injuries.

3) the reactions of administrators as to whether they feel that this type of claim poses a current threat.

4) whether the school district has had any direct contact with equipment manufacturers regarding the need to instruct players in the proper use of equipment.

5) how contractual relationships are handled with athletic officials.

Football coaches and football officials were surveyed to ascertain:

1) whether they have ever been a defendant in a sports related injury case based on negligence.

2) whether they carry any type of individual insurance coverage to protect against such negligence claims.

3) whether they have ever witnessed an injury caused by what they felt was coach/official negligence.

4) whether they have ever witnessed a dangerous situation on the playing field that had the potential to result in physical injury and which was under the direct supervision of a coach or official.

5) their perceptions/concerns about sports injuries when coaching or officiating.

Additionally, a conclusion presents suggestions as to how school districts and other interested parties can protect themselves from unnecessary exposure to sports negligence lawsuits.

II. ESTABLISHING THE TORT CLAIM IN SPORTS CASES

A. Definition of a Tort

The term "tort" was derived from the Latin word "tortus", meaning twisted or crooked.[7] At one time "tort" was in common usage in both the French and English languages, and referred to a wrong committed against another person. The term, however, disappeared from common speech yet was retained by the law. Today, a tort refers to any harm or injury inflicted upon another person, excluding crimes. A crime is a wrong committed against society, and the perpetrator is viewed as having violated a duty owed to the general public. Criminal penalties are imposed in order to redress the public, not the individual against whom the criminal conduct was carried out.

While torts are generally viewed as wrongs committed against a private person, not all such actions will be held as tortious in nature. For example, a breach of contract is not a tort nor is a tort concerned with property rights or the problems of government. What is important, though, is that the conduct be of such a nature that the person causing it can be held legally

---

[7] PROSSER AND KEETON ON THE LAW OF TORTS §32 (5th ed. 1984), hereinafter referred to as Prosser and Keeton.

responsible. This person, referred to as a tortfeasor, may be liable for both equitable and legal remedies, commonly accepted money damages.

B. Intentional Torts

Intentional torts involve conduct where the tortfeasor manifested an intent to harm. This tort differs from negligence in that the latter is the result of accidental or unintentional actions. In terms of liability those persons committing intentional torts are subject to unlimited liability for their actions, while in negligence cases there are limits placed on the tortfeasor's liability due to causation principles. Probably the most common intentional torts witnessed in sports law cases are assault and battery. While assault involves the imposition of a threat or fear of immediate injury, battery is the intentional, harmful touching of another.

Intentional tort theories are employed in sports cases primarily where an athlete wishes to bring an action against another participant for wrongful conduct that was clearly intended to inflict personal injury, and which was not in keeping with the game rules. In Griggas v. Clausen,[8] plaintiff athlete was playing in an amateur basketball game, and as he was about to receive a pass from a teammate, defendant "pushed him and then struck him in the face."[9] Defendant struck the plaintiff again

---

8 6 Ill. App. 2d 412, 128 N.E.2d 363 (1955).

9 Id. at 364.

as he was falling to the floor. As a result of the injuries sustained, plaintiff lay on the floor unconcious for fifteen minutes and later required hospital treatment for various bruises, lacerations, and cuts. In upholding the jury verdict in favor of the plaintiff for $2,000 damages, the appellate court noted that the injured had been "subjected to a wanton and unprovoked assault and was struck at a time when he had his back to defendant."[10] The court also had no difficulty in upholding the jury's award of exemplary damages given the severity of the injuries inflicted.

In a similar case[11] plaintiff Luttrell, a baseball batter, filed suit based on assault and battery after being struck by defendant Averill, who was the catcher for the opposing team. The altercation was precipitated when the plaintiff was nearly hit by three pitches, and then was struck by the fourth. Plaintiff responded by throwing his bat at the opposing pitcher, and it is at this point that defendant catcher rendered the batter unconcious with a blow to the side of the head. Although the court recognized that the assault by the catcher "was no part of the ordinary risks expected to be encountered in sportsmanlike play,"[12] it refused to hold the defendant's baseball team liable for the tort. The court reasoned that the assault was neither

---

10 Id. at 366.

11 Averill v. Luttrell, 44 Tenn. App. 3d 56, 311 S.W.2d 812 (1957).

12 Id., at 814.

incident to nor in the furtherance of his (the catcher) employer's business, and therefore dismissed the suit as to the employer baseball team. This dismissal removed the assets of the baseball team from Luttrell's reach, leaving Averill solely responsible for the assault and battery.

Proving intent in a sports injury case can be difficult. This is especially true in traditional contact sports, such as football, where a certain level of aggressiveness is allowed as proper if contained within the parameters of the rules. Efforts by a plaintiff to recover under an intentional tort theory may also be thwarted by various defenses available to the defendant. The most important of these is the equitable theory volenti non fit injuria, " he who consents cannot receive an injury." This maxim posits that an athlete consents to any and all contact sustained as a result of his participation. As this doctrine was developed the consent defense was deemed valid only as to those contacts that were in conformance with the rules. The Restatement (Second) of Torts has formalized this modern approach:

> Taking part in a game manifests a willingness to submit to such bodily contacts or restrictions of liberty as are permitted by its rules or usages. Participating in such a game does not manifest consent to contacts which are prohibited by rules or usages of the game if such rules or usages are designed to protect the participants and not merely to secure the better

> playing of the game as a test of skill. This is true although the player knows that those with or against whom he is playing are habitual violators of such rules.13

Consequently, intentional acts that are obvious violations of game rules are not consented to since they are not of the type that the participant could legitimately expect to encounter. In determining the liability of school administrators, coaches, and officials for sports related injuries, the intentional tort theory is not generally put forward by injured athletes as a basis for liability. Even though there is no question that any of these parties would be held responsible for any conduct aimed at inflicting an intentional harm, their primary liability concern involves conduct that is unintentional, or negligent. However, prior to considering the elements that make up a negligence cause of action in a sports case, it is important to review a type of sports tort that falls somewhere between the intentional tort and the unintentional negligence claim. This tort is generally referred to as "reckless misconduct."

C. Reckless Misconduct

Due to the proof problems inherent in proving intent, a claim of reckless misconduct will often prove to be a more appropriate theory on which to base a sports injury case. Recklessness is defined as conduct which a reasonable person

---

13 RESTATEMENT (SECOND) OF TORTS §50, comment b (1965).

would understand as creating " an unreasonable risk of physical harm to another."[14] As applied to injured athlete cases, this approach has been adopted in both amateur and professional sports.

In Nabozny v. Barnhill,[15] the goal tender of a high school soccer team was seriously injured when defendant kicked the left side of his head. Nabozny had gone into a kneeling position inside the penalty zone in order to receive a pass from his teammate. Witnesses testified that the plaintiff was in possession of the ball when the reckless contact occurred. Nabozny relied on the testimony of expert witnesses which established that under F.I.F.A. soccer rules, all players are prohibited "from making contact with the goalkeeper when he is in possession of the ball in the penalty area." Further, it is relevant as to whether such contact is unintentional.

In reversing a court decision for the defendant, the appellate court held that "a player is liable for injury in a tort action if his conduct is such that it is either deliberate, willful or with a reckless disregard for the safety of the other player so as to cause injury to that player." The court noted

---

14 RESTATEMENT (SECOND) OF TORTS §500 (1975).

15 31 Ill. App. 3d 212, 334 N.E.2d 258 (1975).

that it had some reluctance in regulating athletic competition,[16] however, the alternative of allowing an innocently injured athlete to go uncompensated was unacceptable.

The reckless misconduct tort was extended to professional sports in Hackbart v. Cincinnati Bengals, Inc.[17] In Hackbart the plaintiff was injured when Charles "Booby" Clark, a member of the Cincinnati Bengals professional football team, hit him from behind. A penalty was not called since the officials had not observed the incident. Plaintiff attempted to show that Clark was responsible for assault and battery. However, the lawsuit had not been commenced within the one year time limit as provided by the statute of limitations, and consequently an intentional tort theory of recovery was not available. Hackbart relied, instead, on the argument that a Colorado statute which provided for a six year limitations period was applicable because the "injury was the result of reckless disregard of the right of the plaintiff." The trial court refused to apply the reckless misconduct theory to professional football finding the activity to be a "business which is violent in nature." This decision was overturned by the appeals court, upholding Hackbart's reckless

---

16 "This court believes that the law should not place unreasonable burdens on the free and vigorous participation in sports by our youth. However, we also believe that organized, athletic competition does not exist in a vacuum. Rather, some of the restraints of civilization must accompany every athlete onto the playing field. One of the educational benefits of organized athletic competition to our youth is the development of discipline and self control."
Id. at 260.

17 601 F.2d 516 (10th Cir.), cert. denied, 444 U.S. 931 (1979).

misconduct claim and thereby applying the Nabozny decision to professional sports.

D. Negligence

The law mandates that an individual's conduct not create a risk to another person that is considered unreasonable. Where a person fails to act in accordance with this standard, his conduct is termed negligent.[18] Negligence includes situations where a person acts affirmatively and his conduct falls below the accepted standard, as well as where a person fails to act when a duty is owed. Not included within the definition of negligence is that conduct which is viewed as intentional or reckless. The measure which is used to determine whether conduct is negligent is that of the reasonable person.[19] Where a reasonable person would not have committed the act in question, or where the same reasonable person would have taken some affirmative action as opposed to doing nothing, the reasonableness test of traditional tort law has been violated. What constitutes reasonable behavior

---

18 RESTATEMENT (SECOND) OF TORTS, §282.

19 There is no consensus as to what constitutes the correct measure to be used in applying this standard: "There is no fixed standard in the law by which a court is enabled to arbitrarily say in every case what conduct shall be considered reasonable and prudent and what shall constitute ordinary care under any and all circumstances. The terms 'ordinary care,' and 'reasonable prudence,' and such like term, as applied to the conduct and affairs of men, have a relative significance, and cannot be arbitrarily defined. What may be deemed ordinary care in one case, may, under different surroundings and circumstances, be gross negligence." Railway Co. v. Ives, 144 U.S. 408, 417 (1891).

will vary, and depends upon the standard of conduct or duty of care that is owed to another individual.[20]

1. Duty of Care Owed To An Athlete

In evaluating the duty of care that is owed to an athlete, it is important to analyze carefully the relationship between the injured plaintiff athlete and the individual who was allegedly negligent. The duty of care that is owed will be different for the school administrator, as opposed to a coach or sports official. That is due to the role that each of these various parties plays in administering secondary school sports and is directly attributable to their relative "closeness" to the field of play.

a) Common Law Duty

The common law recognized that someone may owe a duty to control based on the relationship between the two parties.[21] This affirmative obligation to control was initially very limited in its scope in that application was limited to certain relationships. Supporting this limited application was the argument that in some relationships one of the parties is in a unique position to protect the other party, and therefore owes a duty to exercise

---

20 In determining the standard of conduct expected of a reasonable man the RESTATEMENT provides:

The standard of conduct by a reasonable man may be (a) established by a legislative enactment or administrative regulation which so provides, or (b) adopted by the court from a legislative enactment or an administrative regulation which does not so provide, or (c) established by judicial decision, or (d) applied to the facts of the case by the trial judge or the jury, if there is no such enactment, regulation, or decision.

21 Id. at §315.

his special skill or judgement in an effort to extend protection to third parties. Relationships that have been determined to fall under the duty to control penumbra include the employer-employee and the parent-child. In these relationships the common law holds that the employer and parent are in a unique position to control the conduct of the employee and the child. Because the law vests in these dominant figures the right to control, it also imposes the expectation or obligation that such control will be affirmatively exercised in such a manner so as to minimize harm to others. Innocent third parties, then, have a right to expect that they will not be harmed by the failure of the dominant figures to assume the control obligation, and as such, are in a position to claim that a tort duty of care owed to them has been breached.

Unlike school administrators whose liability in sports injury cases is generally predicated on the doctrine of respondeat superior, both coaches and sports officials may be held to owe the duty of control to participant athletes. Coaches who exhort their players to participate too aggressively may be open to a negligence claim when a player loses control and negligently injures another participant. Deciding when and where a coach has the ability, and therefore the duty, to control athlete

conduct can be difficult.[22] A coach is not liable for the actions of an athlete if he owes no duty of care. Consequently, if a coach has performed all his or her duties in a proper fashion and has not violated the control element of the duty of care, a negligence action will not lie. Coaching duties that would generally be regarded as falling within the duty of care include: according reasonable supervision to insure adequate protection, properly instructing athletes as to game rules, taking appropriate action where an injury occurs, and insuring environmental considerations do not pose a threat of injury.

In evaluating a referee's potential vulnerability to a negligence claim, the common law duty of care requires that conduct on the field be evaluated according to what a reasonably prudent referee would have done. The sports official is charged

---

22 The duty of control based on custody would appear to be an appropriate theory on which to base a negligence claim against a coach. Section 320 of the RESTATEMENT (SECOND) TORTS, provides:

> One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a duty to exercise reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other or so conducting themselves as to create an unreasonable risk of harm to him, if the actor (a) knows or has reason to know that he has the bility to control the conduct of the third persons, and (b) knows or should know of the necessity and opportunity for exercising such control.

This rule has been held to apply to a "sheriff or peace officer, a jailer or warden of a penal institution, officials in charge of a state asylum or hospital for the criminally insane, or to teachers or other persons in charge of a public school," as well as to "persons conducting a private hospital or asylum, a private school, and to lessees of convict labor." Id. at Comment a. (emphasis added).

with the responsibility of insuring that the game is played in accordance with the rules, and consequently owes an obligation to all participants to control on-the-field conduct appropriately. It is the referee's willing acceptance of the responsibility of proper supervision that creates a duty of care owed to the athlete, and any affirmative misconduct may lead to negligence liability. By merely stepping onto the playing field the referee assumes a position of authority over the participant athletes, a responsibility that requires an appropriate recognition that tort law will hold the individual liable for negligent misconduct.

As mentioned earlier school districts and administrators may be legally liable for the negligent acts of employees, such as coaches. However, they may also be held liable under a negligence theory in cases where a common law duty of care is owed to the injured athlete. There is no question that school districts carry the responsibility for a certain portion of the administrative requirements necessary to support a sports program. Provision of adequate and timely medical services, and an obligation to select competent coaches are among the responsibilities assumed by the school administration. Assumption of these duties necessarily gives rise to a duty of care owed to athletes and creates the possibility of a negligence lawsuit.

b) Contractual Duty

In sports cases it is possible that a duty of care may arise from a contractual relationship. This theory of recovery is most

applicable to coaches and referees since both of these parties have entered into contracts prior to performing their respective duties. The coach's contract is with the school district while the official may have signed a contract to work the game through a booking agent, or in some cases, will have contracted directly with the school. In either case, the existence of the contract creates certain obligations in the parties that must be performed in a satisfactory manner, or there may be negligence liability.

A coach or referee who acts negligently is clearly violating the contract that he or she signed, since there is inherent in the agreement provision that these parties will use certain skill and knowledge in performing their duties. The question that arises from these contractual relationships is whether the injured athlete can rely on the contract to establish a duty of care in tort law. Since contracts are regarded as being personal to those individuals who have entered into them, the general rule that developed denied third persons the right to sue on a contract to which they were not a party.[23] It was reasoned that there was no logical connection between the contract and non parties, and therefore, no duty of care was created. This

---

23 The general rule was well stated in Savings Bank v. Ward, 100 U.S. 195, 204 (1879):

> Such an act of negligence being imminently dangerous to the lives of others, the wrong-doer is liable to the injured party, whether there be any any contract between them or not. Where the wrongful act is not immediately dangerous to the lives of others, the negligent party, unless he be a public agent in the performance of some duty, is in general liable only to the party with whom he contracted, and on the ground that negligence is in breach of the contract.

concept, known as privity of contract, was responsible for many harsh decisions in contract law, particularly with respect to injuries caused by defective products. These early cases allowed manufacturers to escape liability to an injured consumer on the theory that there was no privity of contract between the company and the purchaser.[24] The consumer was left with having to pursue a remedy against the dealer that had sold him the defective product, and this was invariably an inadequate solution since the assets available for recovery of a judgement were usually more limited than in the case of the manufacturer.

In contract law the privity problem was eventually overcome in products cases by instituting a rule of strict liability which was clearly aimed at protecting consumers.[25] Such a change was not forthcoming in negligence law as courts refused to allow injured third parties the right to base a tort claim on the contract. This was especially true in cases where a party to the contract had failed to perform at all, so-called nonfeasance. In this situation even the non-breaching party to the contract did

---

[24] The privity rule is better known as the doctrine of caveat emptor, let the buyer beware.

[25] In MacPherson v. Buick Motor Company, 217 N.Y. 382, 111 N.E. 1050 (1916), Justice Cardoza, writing for the majority, struck down the privity of contract rule in New York. The plaintiff had been injured when a wheel on the car in which he was riding shattered causing him to be thrown out. Plaintiff had purchased the car from a retail dealer but argued that he should not be prevented from suing the manufacturer. Even though the defective wheel had not been made by Buick Motor Company, plaintiff argued that it was in the best position to have insured that the wheel was safe. The MacPherson ruling was rapidly adopted by other states and opened the way for consumer negligence cases against manufacturers.

not have a right to file a tort action, instead having to rely on a breach of contract theory. Courts reasoned that a third person should not have a better claim than the non-breaching contract party.

Gradually, tort law began to recognize that innocent third parties, who rely on a contract to which they are not a party, ought to be able to sue for negligence if injured by tortious conduct.[26] At first, this right was extended to cover certain relationships such as landlord-tenant, it being accepted that a tenant's guest has a right to expect that the landlord will keep the premises in such repair so as not to present a risk of injury.[27] This same policy was extended to cover agents or employees, who in accordance with their employment contracts, accepted custody or control over people.[28] An argument can be made that a referee enters into a contract to provide services that will benefit the athletes, thereby giving rise to a tort

---

[26] In the 1922 New York case Glanzer v. Shepard, 233 N.Y. 236, 135 N.E. 275 (1922), Justice Cardoza extended the MacPherson ruling to cover non-product cases.

[27] Flood v. Pabst Brewing Co., 149 N.W. 489 (1914).

[28] Hagerty v. Montana Ore Purchasing Co., 68 P. 643 (1908).

duty of care.[29] Sports participants have a right to expect that an official will perform his duties in a non-negligent fashion, and where this is not done courts may look to the employment contract to establish a tort claim. Likewise, a coach's contract could be viewed as creating a similar duty of care that is owed to an athlete.

c) Statutory Duty

It is also possible that a duty of care may be created by statute or by a game rule. In the case of a game rule, the court in Nabozny looked to the defendant's violation of the F.I.F.A. rule as being a direct, contributory factor to plaintiff's injury. Therefore, since the rule clearly established the appropriate standard of care, the defendant's conduct constituted negligence. Where a statute specifies the conduct level required by law, failure to abide by the statutory standard of care will constitute negligence per se.[30] If a statute requires that coaches or team trainers undergo certain para-medical training, and subsequently a player's injuries are rendered more severe because the attending party did not receive

---

[29] California courts have acknowledged that a tort action will emanate from a contract especially where the breaching party possessed unique skill or knowledge. This approach could be viewed as being sufficient to include referees and coaches. Rosco Moss Co v. Jenkins, 55 Cal. App. 2d 369, 130 P.2d 477, 481 (1942), ("The rule which imposes this duty is of universal application as to all persons who by contract undertake professional or other business engagements requiring the exercise of care, skill and knowledge; the obligation is implied by law and need not be stated in the agreement.").

[30] Restatement of (SECOND) Torts, §285.

the required instruction, this would be negligence as a matter of law.[31]

Some states have enacted statutes which provide a definition of the duty of care to be applied in cases where a common law duty of care does not exist. These statutes are used infrequently in sports cases since the conduct involved is generally found to be under the common law duty. California represents a unique case in that it provides a statutory duty of care to be imposed on boxing referees. The pertinent statute provides that a boxing match be stopped by the referee "when either of the contestants shows a marked superiority or is apparently outclassed."[32] Since this statute refers specifically to the boxing referee, it cannot be viewed as creating a similar duty of care for officials in other sports.

2. Breaching the Duty of Care

Before liability may be imposed for negligent conduct it must be demonstrated that the duty of care was violated or breached.[33] In deciding this question the individual's conduct is evaluated to determine whether it fell below that level required by the standard of care. Tort law requires that this

---

[31] The NDHSAA requires that all secondary school athletes receive a physical prior to participating in interscholastic sports. Failure of a coach or school administrator to require an athlete to undergo such an examination would be another example of conduct that would be held to be negligence per se. NDHSAA By Laws, ARTICLE XI.

[32] CAL. BUS. & PROF. CODE §18745.

[33] RESTATEMENT OF (SECOND) TORTS, §328A.

evaluation be made in accordance with the judgement and skill that would have been exercised by a reasonable person in the same circumstances. Individuals are not held to a higher level of conduct, however, where they possess certain skill or expertise as in the case of a referee, then the appropriate measure will be what a reasonably prudent referee would have done in the same situation. As a result, where an official allows a game to be played during a thunderstorm and an athlete is injured by lightning, the duty of care could be held to have been violated. Likewise, failure to enforce required equipment rules, failure to penalize prohibited conduct, and failure to provide proper supervision of medical assistance may be viewed as breaching the duty of care owed to an athlete by an official.

Tort law only holds a person responsible for those injuries that are forseeable by a reasonable person. To hold otherwise would be to subject a tortfeasor to a limitless listing of consequences and catastrophes. For example, if a football player suffering from a congenital heart problem has that condition aggravated by an on-the-field injury, should a coach be liable where he had no reason to know of the player's special medical problem? It is likely that in such a case the effect of the contact injury in causing more damage to the player's heart would not be held as being forseeable. However, one need only alter the facts such that the coach was aware of the heart ailment, and the law of torts would be much more likely to find that the duty of care was breached. This would be based on the argument that a

reasonably prudent coach would have forseen that contact injuries would aggravate the player's medical problem.

3. Causation and Injury

When an appropriate duty and standard of care have been established, along with a breach of that duty, the plaintiff athlete must also prove that the claimed negligent act was both the actual and legal cause of his injuries.[34] As to the injury itself, the player must show that a physical harm resulted from the negligent act, since mere damage to a property interest is insufficient.

Actual cause, often referred to as cause-in-fact, is a question of fact in torts cases that is resolved by the jury, or the judge in non-jury trials. The test used to reach such a determination is the well known "but-for" standard. Where the plaintiff athlete can show that he would not have suffered injury "but-for" the defendant tortfeasor's conduct, the actual causation element has been proven. A referee or coach may be the actual cause of a participant athlete's injury by virtue of either having failed to act, or by acting affirmatively. Even though officials are obligated to enforce game rules uniformly and fairly, they cannot possibly prevent all potential injuries on the playing field. However, in cases where a referee's failure to enforce game rules results in a physical injury, the "but-for" test will have been satisfied. Actual causation, though, is insufficient to hold an individual liable under

---

[34] Id. at §328A.

negligence. It must also be demonstrated that the tortfeasor should be held liable as the legal cause of the injuries.

The purpose of the proximate cause requirement is to place a limit on the extent to which a tortfeasor should be responsible for his negligent acts.[35] It would not be appropriate to hold a tortfeasor liable for every conceivable consequence of his negligent conduct.[36] Proximate causation requires that there be a cutoff point in determining such liability. Where a coach is held to have been negligent for moving an injured player, should he be responsible for the actions of a doctor who subsequently acts negligently, thereby aggravating the injury? The answer to this causation question will depend upon a determination as to whether the injured athlete would have suffered the same injury despite the coach's negligent conduct. In sports law cases, as in other tort actions, the doctrine of proximate cause seeks to apportion liability for multiple acts of negligence rather than hold the original tortfeasor liable for all consequences of his act.

4. Defenses to a Negligence Claim

The common law recognized the right of a defendant to avoid liability for negligence if it could be demonstrated that the plaintiff was contributorily negligent. This defense recognized

---

[35] Id. at §§ 430-431.

[36] In deciding what will constitute proximate cause the negligent person's conduct must have been a "substantial factor in bringing about the harm." Id. at §431.

that a plaintiff, whose own lack of reasonable care contributed to his injury, should not be permitted to recover against a negligent defendant. Consequently, under common law this defense was complete in that no recovery was allowed, even in cases where the defendant's conduct had been significantly more negligent than that of the plaintiff.[37] In sports cases an injured athlete will not be permitted to recover against a negligent official or coach if contributory negligence can be shown. Where a football player has been properly instructed to not use the helmet in making initial contact and fails to heed his coach's advice, the player must bear the responsibility for any injuries so received.

Another defense available to a sports law defendant is assumption of the risk. Participant athletes must necessarily assume risks that are an inherent part of the game. In Vendrell v. School District No. 26C, Walhelm County,[38] a football player suffered permanent damage to his neck and spinal cord when he lowered his head in order to ward off potential tacklers. At trial, significant testimony was introduced to demonstrate that the coach had properly instructed the player not to use the helmet as an offensive weapon. The court also recognized the contact element of football as an inherent risk assumed by all participants:

---

[37] A majority of states now follow a comparative negligence rule whereby a contributorily negligent plaintiff may still recover.

[38] 233 Ore. 1, 376 P.2d 406 (1962).

> The playing of football is a body-contact sport. The game demands that the players come into physical contact with each other constantly, frequently with great force. The linemen charge the opposing line vigorously, shoulder to shoulder. The tackler faces the risk of leaping at the swiftly moving legs of the ball-carrier and the latter must be prepared to strike the ground violently. Body contacts, bruises, and clashes are inherent in the game. There is no other way to play it. No prospective player need be told that a participant in the game of football may sustain injury. That fact is self evident. It draws to the game the manly; they accept its risks, blows, clashes and injuries without whimper. . . . . [The] plaintiff assumed the risk attendant upon being tackled. The risk of injury that was inherent in being tackled was obvious. The plaintiff was thoroughly familiar with it. He had been tackled scores of times and had been the tackler many, many times. The tackle in question was made fairly and according to the rules.[39]

Where the court finds the risk to fall outside that which is ordinarily encountered in a sport, it will be deemed as being unreasonable and participants will not be held to have assumed the attendant risk of injury.[40]

---

39 376 P.2d 406, 413 (1962).

40 Bourque v. Duplechin, 331 So. 2d 40, 42 (La. App. 1976).

III. LIABILITY FOR SECONDARY SCHOOL SPORTS INJURIES - A NATIONAL PERSPECTIVE

A. Doctrine of Respondeat Superior

As previously mentioned, the doctrine of respondeat superior will vicariously impose liability on an employer for the tortious acts of his employee, if the employee was acting within the scope of employment. In effect, the injured third person may bring a legal action against either the employer or the employee, or both simultaneously. This is permitted since the employer and employee are jointly and severally liable. Under respondeat superior an employee's liability may also be based on other tort theories of recovery. For instance, an employer may be legally liable for having been negligent in hiring an incompetent employee or independent contractor, and the employer will also be responsible for any intentional tort which he directs the employee to do or which he ratifies.[41]

In analyzing whether an employee has acted within the scope of employment, courts consider a number of factors. The employee's conduct is evaluated to determine whether it was of the type that the employee was hired to do. Whether the employer had reason to expect that the agent would commit such an act and furnished the means by which the employee accomplished the act, are additional considerations. Courts also evaluate the act to insure that it occurred within the time and space limitations of the employment relationship. Today, courts have adopted a more

---

41 SELL, at 89-90.

liberal interpretation of the requirements necessary to find that an employee acted within the scope of employment. This view is premised on the policy argument that innocent injured third persons should not be denied the right to proceed against the employer, since it is the employer who is generally in a better position to compensate the loss.

The doctrine of respondeat superior does not apply to independent contractors, since they are not regarded as employees. Independent contractors exercise a greater degree of independence in completing an assigned job than do employees.[42] They essentially undertake to complete an assignment based on instructions as to what the end result should be, however, they are not controlled or directed by the person hiring them.

In sports cases the doctrine of respondeat superior is extremely important since an official's and coach's negligent conduct may be vicariously imputed to the school district, depending upon the contractual arrangements involved. Where a coach has acted negligently his employment contract will be sufficient to conclude that respondeat superior applies. It matters only that a court conclude that the coach was acting within the scope of employment. As for officials, they may have contracted directly with the school or have been assigned games by a local association or booking agent.[43] In the case of the

---

42 SELL at pp. 85-86.

43 See Section V, SURVEY RESULTS, TABLE 4 and accompanying text for an explanation of how these contractual relationships are handled by North Dakota secondary schools

former, the employment contract will render the official an employee or agent, and therefore bring him under the purview of the respondeat superior doctrine. A more interesting question arises as to the latter contractual arrangement. Is an official considered an employee of a school district when the district contracted with a local booking agent to assign officials to its games? In a practical sense it is unlikely that a court will relieve a negligent referee of liability simply because the employment contract was with the booking agent or association. It is far more likely that the referee would be viewed as a sub-agent[44] of the booking agent and would incur negligence liability accordingly. If anything, this type of indirect contractual relationship might also serve to render the booking agent liable for the negligent conduct of the official.

The application of the doctrine of respondeat superior to sports negligence cases is subject to one very important exception. Under the doctrine of sovereign immunity a state may not be sued without its consent, and in its basic form the immunity is complete in all respects. Coverage provided under this doctrine extends to public schools and school administrators; however, it has been held not to apply to the actions of a state high school athletic association.[45] Since the

---

44 Reuschlin and Gregory at 17-21. See also RESTATEMENT (SECOND) OF AGENCY, § 428.

45 Coughlin v. Iowa High School Athletic Association, 150 N.W. 2d 660 (1967).

sovereign immunity doctrine has come under tremendous criticism in recent years, most states have taken action statutorily to permit lawsuits against the state.[46] It must be noted, though, that in those jurisdictions where the concept is still in effect any lawsuit filed by an injured public school athlete against the district will be dismissed out of hand.

B. Liability of School Districts and Administrators

In jurisdictions where school districts and administrators are not protected by sovereign and charitable immunity, they will be responsible for athletic injuries that are reasonably forseeable[47] and which are caused by a failure to exercise an acceptable level of care to prevent such injuries.[48] The doctrine of respondeat superior provides the basis for this liability and imposes on the school administrator a duty to exercise reasonable care in making decisions which may result in

---

46 Prosser and Keeton, at 1044-1046.

47 Taylor v. Oakland Scavenger Co., 17 Cal.2d 594, 110 P.2d 1044, 1048 (1941), ("[The school's] negligence is established if a reasonably prudent person would foresee that injuries of the same general type would be likely to happen in the absence of such safeguards.");

48 In Reynolds v. The State of New York, 141 N.Y.S. 2d 615, 618 (1955) the court stated:

Such instructor, supervisor or teacher has the duty of reasonable care in the prevention of injury, and must use the judgment of a qualified prudent person under similar circumstances. The question is resolved into whether such supervisor, as a reasonably prudent man before the occurrence of the accident had been apprehensive that, in the situation presented, there lurked the possibility of serious injury to anyone participating in the exercise.

the creation of a foreseeable risk of injury to a student athlete. This duty has been construed to include a school's responsibility to formulate rules of conduct to which student athletes must adhere[49] and an obligation to exercise due care in selecting those individuals who will supervise athletic activity, including interscholastic and non-interscholastic sports.[50]

In Garber v. Central School Dist. No[51] a twelve year old schoolboy was injured while playing in the school gymnasium. All boys in the school were not permitted to leave the school premises after eating their noon meal and were required to spend the balance of the lunch period in the school gymnasium. It was during one of these lunch periods that plaintiff was injured while playing the aforementioned game. While in the gymnasium the boys "were under the exclusive direction and control of a janitor, without other supervision."[52] Plaintiff Garber argued that the school district had abrogated both its common law negligence duty of due care and its obligations imposed by a

---

[49] Charonatt v. San Francisco Unified School District, 56 Cal. App. 2d 840, 133 P.2d 643, 644 (1943).

[50] Tardiff v. Shoreline School District, 68 Wash. 2d 164, 411 P.2d 889, 893 (1966), ("[A] school district may be liable for injuries sustained as a result of negligent supervision or failure to supervise activities of its students." , citing, Rodriguez v. Seattle School District No. 1, 66 Wash. Dec. 2d 46, 401 P.2d 326 (1965), (emphasis added).

[51] 251 App. Div. 214, 295 N.Y.S. 850 (1937).

[52] Id.

state law requiring the establishment of rules governing student conduct and provision of qualified supervisors.[53] The court accepted plaintiff's argument as to the duty of care owed by the school district stating:

> [I]n view of the character of the game, the age and size of the infant plaintiff, the equipment used, and the conduct of the janitor, it may not be said as a matter of law that the janitor possessed either the knowledge, the skill, or the experience to supervise or direct, in the circumstances; the evidence indicates that the board not only had no reason to believe that he did, but points in the opposite direction. The very reason for the careful selection of persons qualified by experience and judgement, for such duties, is to prevent the kind of accident involved here."[54]

The Garber case rationale provides sufficient basis on which to ground a school administrator's liability for failure to exercise due care in selecting athletic coaches. Administrators must be cognizant of the need to adequately screen the records of

---

53 [Allowing the janitor to supervise lunch hour activity] was a palpable failure to meet the requirements of the common-law rule, as well as an evident neglect of the duty imposed by the statute. It is indicative not only of a disregard of the statutory mandate to make rules and regulations to establish order and discipline, but also to carefully select suitable supervisors to whom the safety of children was to be entrusted while under school restraint.
Id. at 858.

54 Id.

applicants for coaching positions to insure that they are, in fact, qualified.[55] Consideration should also be given to whether applicants have had emergency first aid training, especially where such training is mandated by state statute. Failure to comply with state law could result in a finding that the school district and administrator were negligent per se.

School administrators may also be held to have acted negligently where athletic equipment or facilities are found to be defective or deficient.[56] In Gerrity v. Beatty[57] the trial court dismissed a count made in plaintiff's complaint that he had not been provided a proper fitting football helmet, and that this caused his injury and constituted negligence on the part of the defendant school. The appeals court reversed the trial court decision holding that the plaintiff's count regarding ill fitting equipment should have been permitted to stand since it

---

55 See Brittan v. State, 200 Misc. 743, 103 N.Y.S. 2d 485 (1951), where a student was permitted to supervise a physical fitness test and one of the student-participants suffered an injury. The court held the defendant negligent for allowing an unqualified student to conduct the test.

56 Bush v. Norwalk, 122 Conn. 426, 189A. 608 (1937) (injury caused by unsturdy balance beam due to a slippery floor) and Bradley v. Board of Education of Oneonta, 243 App. Div. 651, 276 N.Y.S. 622 (1935), affirmed, 274 N.Y. 473, 8 N.E. 2d 610 (1937) (objects protruding from gymnasium wall caused injury). School districts may also be held liable for negligence relative to providing transportation to and from sporting events. See generally, TORT LIABILITY OF PUBLIC SCHOOLS AND INSTITUTIONS OF HIGHER LEARNING FOR ACCIDENTS ASSOCIATED WITH THE TRANSPORTATION OF STUDENTS, 34 A.L.R. 3d 1210, 1242-44.

57 71 Ill. 2d 47, 373 N.E. 2d 1323 (1979).

represented an appropriate allegation that the school district had failed to exercise ordinary care.[58]

A school was similarly held not to be immune from potential liability for furnishing a defectively designed helmet to a hockey player in Everett v. Bucky Warren, Incorporated.[59] The Pender helmet had been designed with large gaps wide enough for a hockey puck to penetrate and cause considerable head injury and was inferior to one piece helmets that were available from other manufacturers. Based on testimony by the coach that he knew the one piece helmet was safer and other evidence concerning the design of the Pender model, the jury returned a verdict in favor of plaintiff awarding him $85,000. The appeals court

---

58 [P]ublic policy considerations argue rather strongly against any interpretation which would relax a school district's obligation to insure that equipment provided for students in connection with activities of this type is fit for the purpose. To hold school districts to the duty of ordinary care in such matters would not be unduly burdensome, nor does it appear to us to be inconsistent with the intended purposes of ... the School Code.

Id. at 1326.

59 380 N.E. 2d 653 (Mass. 1978).

subsequently held that there was sufficient evidence to hold both the manufacturer and the school liable.[60]

The one North Dakota case that alleged negligent conduct by high school officials was responsible for the death of an athlete struck by a javelin at a track meet, resulted in a February 1986 jury decision in favor of the school districts.[61] On April 24, 1984, a track meet was held in New Rockford involving the local high school and Tolna High School. The javelin event was conducted on the infield simultaneously with other events being held on the track. Rochelle Harding, a member of the New Rockford team, went under the rope separating the track and infield in order to get to the far side of the stadium to compete in a running event. She was struck in the chest by the javelin suffering fatal injuries.

The athelete's mother filed a lawsuit against the New Rockford and Tolna school districts alleging negligence in not providing adequate safety for the student athletes. Plaintiff's case was centered on the argument that the javelin event was

---

[60] The appeals court held that the school "was required to exercise reasonable care not to provide a chattel which it knew or had reason to know was dangerous for its intended use." Id. at 659. Of special importance was the fact that the team's coach was aware that the one piece helmet was available and knew it to be superior to the Pender model. The coach's issuing of the Pender helmet amounted to negligent conduct, and as the school's agent, resulted in a finding of negligence liability as to the school under the doctrine of respondeat superior.

[61] Harding v. New Rockford School Dist. No. 1, No. 2220 (S.E.D.N.D. March 4, 1986).

extremely dangerous when not removed to a location well away from the other events.[62] Further evidence was admitted which demonstrated that North Dakota is in the minority of states which still permit the javelin throw to be included in high school track meets. However, the jury was not persuaded to accept plaintiff's arguments and agreed that the defendant school districts had exercised reasonably prudent care in fulfilling their administrative responsibilities.

C. Liability of Coaches

By virtue of their closeness to the field of play, athletic coaches are in an extremely vulnerable position relative to claims of negligence by injured athletes. Based on the direct control of athletes and supervisory responsibilities that a coach assumes, the critical question raised in these liability cases has been whether the coach failed to exercise ordinary care under the traditional reasonable person standard. Such an argument was raised by an injured football player in Vendrell v. School District No. 26C., Malheur County,[63] where the coach was alleged to have failed to provide proper instruction as to proper

---

[62] The NDHSAA allows the javelin throw to be conducted on the infield if the area is appropriately cordoned from the running track. It should also be noted that even though the NDHSAA regulates the administration of track events in the state, it does not require that track officials carry state certification. As a result, North Dakota school administrators bear the responsibility for providing an adequate number of qualified officials to conduct a track meet.

[63] 233 Ore. 1, 376 P2d 406 (1962).

tackling techniques. Plaintiff Vendrell was a freshman playing in a high school varsity football game, and while running with the ball he lowered his head at the instant two players from the opposing team attempted to tackle him. As a result of the collision, plaintiff suffered a broken neck. The court noted that as part of plaintiff's negligence claim it was alleged that the defendant coach had not provided "proper or sufficient instruction."[64] This claim was interpreted by the court to mean that the defendant's coaches "did not instruct the plaintiff adequately in the manner of playing the game of football, should have told him that in playing football he might sustain injury, and should have told him that if he lowered his head and used it as a battering ram injury to his spine might ensue."[65] Finally, it was alleged that the coaches had failed to exercise reasonable care by providing plaintiff with ill-fitting equipment.

The court held that the coaches had, in fact, provided proper instruction as to physical conditioning and as to the proper method of running the ball while keeping the head in an upright position. Judicial notice was also taken as to the specific instruction that all players had received regarding running with the ball, tackling, and the proper reaction when about to be tackled. The extensive analysis by the court as to the procedures followed by the coaches in preparing their players

---

64 Id. at 412.

65 Id.

for physical contact evidences a clear intent that absent such a rigorous training program liability may very well have been imposed for negligent supervision. Consequently, the Vendrell case serves as a clear example of the level of conduct to which coaches will be held when evaluating whether they have breached the tort duty of ordinary supervisory care, and therefore, should be held liable for negligence.[66]

By 1980 the incidence of head injuries sustained by highschool football players had escalated to the point that the prospect of potential lawsuits had forced a number of manufacturers out of the business of producing helmets. In order to provide some additional liability protection to equipment manufacturers and school personnel, especially where the athlete improperly used his head as a battering ram, the National Federation of State High School Associations required that a warning label be attached to all helmets. The label was first required in 1980 and states:

---

[66] At least one court has held that a coach's duty to inspect equipment is part of the overall duty to provide proper supervision:

> [T]he school district has the authority to purchase and furnish equipment to students. This authority is not shared with teachers and coaches, who have instead the distinct competence or authority to supervise the students and their use of that equipment. A coach's duty to inspect the equipment is subsumed within his or her duty to supervise but does not fall under the school district's authority to furnish. Thomas v. Chicago Board of Education, 77 Ill. 2d 165, 395 N.E.2d 538, 540 (1979) (emphasis added).

WARNING

Do not use this helmet to butt, ram or spear an opposing player. This is in violation of the football rules and can result in severe head, brain or neck injury, paralysis or death to you and possible injury to your opponent.

There is a risk these injuries may also occur as a result of accidental contact without intent to butt, ram or spear.

NO HELMET CAN PREVENT ALL SUCH INJURIES.[67]

Coaches must also be cognizant of player injuries and take special care not to subsequently encourage participation in athletic activity that might aggravate the individual's condition. The leading case[68] on this issue was decided in 1931 and held that a sufficient cause of action for negligence was stated where the plaintiff football player argued that the coach had pressured him to play despite having suffered an injury two weeks earlier. As a result of the coerced participation, the plaintiff suffered additional spinal and internal injuries. The appeals court overturned a lower court decision dismissing the action calling special attention to the coach's responsibility relative to injured players:

---

67 1985 and 1986 Official High School Football Handbook, at 47.

68 Morris v. Union High School Dist. A, 160 Wash. 121, 294 P. 998 (1931).

> It certainly cannot be that a [school] district can maintain a football team, have one of its teachers as trainer and coach, who knows, or in the exercise of reasonable care should know, that one of the players is physically unfit to enter the game, but nevertheless permits, persuades, and coerces such player to play, and in the event of injury to the player be held not liable for such negligent and careless act of its officer or agent.[69]

One final consideration that directly affects a coach's negligence liability is the manner in which injured players are handled. Where a player has suffered an injury a coach may be liable for any aggravation caused by improper movement.[70] Consequently, special care should be exercised where the injuries involve the head, neck, back and spine. In these situations a coach's actions will once again be evaluated in accordance with what a reasonably prudent coach would have done in similar circumstances. Finally, a coach may also be expected to recognize when a player injury is extraordinary and requires

---

69 Id. at 999. However, some courts have required that a coach's misconduct be willful or wanton in order to impose liability. See Thomas v. Chicago Board of Education, 77 Ill. 2d 165, 395 N.E.2d 538, 539 (1979).

70 Welch v. Dunmuir Joint Union High School Dist., 326 P. 2d 633, 635-36 (1958).

immediate medical aid.[71] Additional injuries resulting from a delay in seeking the appropriate medical help would be a breach of the duty of care and would render the coach liable for negligence.

D. Liability of Officials

As mentioned earlier the doctrine of respondeat superior will be available to impose liability on school districts for the negligent conduct of sports officials. In light of this, school administrators must be cognizant of their responsibilities relative to selection of referees since their on-the-field conduct could be directly responsible for the initiation of a negligence lawsuit. Officials must, likewise, be aware that they are responsible to injured athletes for any action which falls below the ordinary standard of care required in tort law. In this respect, officials take charge of an athletic contest from the beginning and share responsibility with school management regarding questions of whether environmental considerations require suspension or delay of the game.[72] Consequently, failure to cease play during a lightning storm, due to condensation on the playing floor, or due to darkness when proper lighting is not

---

71 Mogabgab v. Orleans Parish School Bd., 239 So. 2d 156 (La. App. 1970).

72 1985 and 1986 Official High School Football Handbook, National Federation of State High School Associations, Part II, PRE-GAME INFORMATION, Officials' Jurisdiction, p. 11.

available, are brief examples of the environmental factors that officials must consider.

Of all the responsibilities assumed by a sports official one of the most important is the duty of proper supervision. In Carabba v. Anacortes School District No. 201,[73] the plaintiff athlete was injured during a wrestling match as the result of an illegal hold which the referee failed to see while momentarily distracted. Plaintiff suffered injuries that resulted in permanent paralysis below the neck and subsequently filed suit against the school districts involved based on the referee's negligent conduct. Although the jury returned a verdict for the defendant, the appellate court reversed holding that school districts owe a duty of proper supervision to athletes that may be violated by the actions of a negligent referee. The court also tactily recognized that a sports official may be sued for negligence based on a failure to act as an ordinarily prudent referee.

In addition to having the responsibility of inspecting the playing field, officials also are under an obligation to insure that all players are wearing required, legal equipment.[74] The National Federation of State High School Associations requires that prior to a football game two members of the officiating

---

73 72 Wash. 2d 939, 435 P.2d 936 (1967).

74 1984 and 1985 Official High School Football Officials Manual, National Federation of State High School Associations, Part I, Prerequisites for Good Officiating, ¶118, p.79.

crew, the referee and umpire, ask the head coaches to verify that all player equipment is in conformance with game rules. Any questionable items are examined by the umpire who is the final authority on legality of player equipment. This responsibility, which is clearly enunciated in several National Federation publications, establishes in the game rules the equivalent of a statutory duty of care. Officials must be diligent in the performance of such affirmative obligations since failure to do so could very easily constitute negligence.

IV. REGULATION OF SECONDARY SCHOOL SPORTS IN NORTH DAKOTA

Although the general focus in an injured athlete case is on the negligence liability of those parties most closely connected with supervision of the sporting event, a regulatory body exists in every state that issues rules and regulations that directly impact on the administration of athletics. These state athletic associations establish the rules regarding athlete eligibility and also play an important role in the licensing of state sports officials. This section will discuss the development of the North Dakota High School Activities Association, the manner in which it is organized, and the responsibility it carries relative to the governance of high school athletics in the State of North Dakota.

A. The National Federation of State High School Associations (NFSHSA)

In May 1920 representatives from five state athletic

associations[75] met in Chicago ostensibly "to discuss problems which had resulted from high school contests which were organized by colleges and universities or by other clubs or promoters."[76] The participants at this meeting concluded that issues such as eligibility rules were not being adequately enforced simply because many parties chose to ignore them. It was felt that high school athletes would be well served by a national association that could work to assist state associations in exerting more control over the entire secondary school sports spectrum. This initial group named their organization the "Midwest Federation of State High School Athletic Associations" and adopted a Constitution and By-laws.

In 1921 all of the original five state athletic associations, except Indiana, were represented at the second meeting where they became charter members by formally ratifying the Constitution. At the 1922 meeting eleven states were represented and the organization's name was changed to the "National Federation of State High School Athletic Associations." By 1940 membership in the NFSHSA reached the point that a national office and full-time executive staff were needed. Today, all fifty states and the District of Columbia, as well as other international athletic associations, have individual state high

---

[75] The states represented at this meeting included: Illinois, Iowa, Indiana, Michigan, and Wisconsin. NFSHSA 1985-1986 HANDBOOK, at 14.

[76] Id. at 14.

school athletic and/or activities associations affiliated with the NFSHSA.

The National Council is the NFSHA's legislative body and consists of one representative from each member state association.[77] It is required that each representative "be a state association chief executive officer or governing board member."[78] Administration responsibilities of the National Federation are vested in an Executive Committee, and this committee consists of twelve members elected by the National Council at the annual summer meeting. For purposes of election to the Executive Committee the United States is divided into eight sections[79] with one representative being elected from each, in addition to four at-large representatives. Finally, the members of the Lxecutive Committee elect a president and vice-president who each serve one year terms.

---

[77] NFSHSA CONSTITUTION, ARTICLE VI, sections 1-6. See NFSHSA 1985-1986 HANDBOOK, at 10-11.

[78] Id. at Section 1. See also NFSHSA 1985-1986 HANDBOOK, at 14.

[79] North Dakota belongs to the MIDWEST section along with Kansas, Minnesota, Missouri, Nebraska, and South Dakota.

B. The North Dakota High School Activities Association

1. Early History - The North Dakota High School League (NDHSL)

The early forerunner of the NDHSAA, the North Dakota High School League, was established in 1908.[80] Member schools elected three officers to guide the League through its first year[81] and charged them with the responsibility of working towards the organizations two primary goals and purposes. First, the League was responsible for formulating "eligibility rules that could be applied fairly and equally to every student in the high schools of North Dakota." Second, in its guardian capacity the league sought "to protect member schools, students and personnel from exploitation by special interest groups."[82]

The NDHSL became affiliated with the National Federation in 1923. As the NDHSL developed it became clear that the officers, who served part-time, needed assistance in administering the broad range of services provided by the League to its member schools. Consequently, in 1949 Mr. Earl Abrahamson was appointed

---

80 A Message From Your North Dakota High School Activities Association, (hereinafter referred to as Message). The North Dakota High School League, (hereinafter referred to as NDHSL or the League).

81 These officers included: G.W. Hanna, Valley City, President; C.C. Gray, Grafton, Vice President; and W.C. Stebbins, Grand Forks, Secretary and Treasurer. Id. For a complete listing of League/NDHSAA officers from 1908-1985, see North Dakota High School Activities Association Constitution and By-Laws, 1985-86 Handbook of Interpretations, (hereinafter referred to as Handbook), PART ONE, at 5-14.

82 Message.

full-time executive secretary and League offices were established in the City Hall Building in Valley City.[83] The NDHSL's title was changed to the North Dakota High School Activities Association in 1955 "to better symbolize and describe the nature of the work in promoting interscholastic activities in the fields of music, speech and dramatics, as well as school athletics."[84]

2. Organization and Classification of Schools

Any North Dakota public or private high school classified by the State Department of Public Instruction is eligible to join the NDHSAA,[85] as is any approved junior high school which is housed and competing as a separate entity. Annual membership is maintained with the payment of annual dues to the association. Membership in the NDHSAA may be suspended or revoked by the Board of Directors for rules violations, and only the Board has the authority to reinstate suspended member schools.[86] Finally, membership is also open to schools that do not participate in interscholastic activities but which desire to secure the

---

83 Message. In 1962 the NDHSAA acquired its own office building in Valley City, which continues to function as the Association's main office. This office is located at 134 NE 3d Street, Valley City.

84 Message, HISTORY.

85 Constitution, ARTICLE III - MEMBERS, Section I, See Handbook, PART TWO, at 15. Presently, two hundred forty one high schools hold membership in the NDHSAA.

86 Constitution, ARTICLE III - MEMBERS, Section V. See Handbook, PART TWO, at 16.

benefits of the association's A.A.B. Fund protection. These schools become eligible for this insurance protection through payment of the annual dues, however, they are not entitled to other privileges of membership."

North Dakota schools are classified as either Class A or Class B depending upon the total number of students in grades 9-12. Where the enrollment is 325 students or more, the school is Class A,[87] while all schools with an enrollment under 325 are considered Class B.[88] Schools having an "enrollment of more than 199 and less than 325 in grades 9-12" may elect to compete in Class A. When a Class A school's enrollment drops below 325 it has a one year grace period in which to decide its class of competition. However, where a Class A school drops below 200 in enrollment for two consecutive years, a reclassification to B is required. Likewise, should a Class B school increase enrollment to above 324 for two consecutive years, an upgrade to A is mandatory.

3. Administration

The board of directors has primary administration

---

87 By-Laws of the North Dakota High School Activities Association, ARTICLE II - CLASSIFICATION OF SCHOOLS, Section I (a), (hereinafter referred to as By-Laws); Handbook, PART TWO, at 24.

88 Id. at Section II; Handbook, PART TWO, at 25. See also Message, ORGANIZATION. The NDHSAA instituted this two-tier system in 1964. Prior to 1964 North Dakota used a three class system with schools rated as A, B, or C.

responsibility for the NDHSAA.[89] The board consists of ten members, eight of whom are elected by the member schools, and who serve for three year terms. Three board members are from Class A schools and are chosen by member schools located within three geographical regions established by the NDHSAA Constitution, (see Figure 1). Four members from Class B schools are similarly chosen from constitutionally mandated geographic areas, (see Figure 2). Membership is also vested in an individual selected by the executive committee of North Dakota School Boards Association (NDSBA), and this person must be either the executive director of the NDSBA or a school board member from a member school. Board members are nominated at the annual meeting of the Representative Assembly and may serve no more than two consecutive three year terms.

The board of directors selects a president and vice-president from its membership and accomplishes its duties by holding eight regular meetings a year in addition to any special meetings as required. This body "does not have the authority to either make or waive any of the provisions or regulations contained in the North Dakota High School Activities Association Constitution or By-Laws." Its functioning has been characterized

---

89 The present NDHSAA Board of Directors includes: Richard W. Kunkel, President, (Devils Lake); Donald M. Strang, Vice-President (Des Lacs-Burlington); Arlo B. Howe (Dickinson); R. Edward Mundy (Minot); Melvin C. Olsen (Cavalier); Calvin L. Sailer (South Heart); Mark S. Sanford (Grand Forks); Jerome R. Tjaden (Casselton); Elmer J. Huber, Department of public Instruction, (Bismarck); Richard D. Ott, North Dakota School Board Association, (Bismarck). Handbook, PART ONE, at 13-14.

as being similar to that of a local board of education, since all amendments to the constitution and by-laws must be approved by a vote of the representative assembly.[90]

The Executive Secretary-Treasurer "is an officer of the association and of the board of directors, and shall be appointed by said board for a contract term of not to exceed three years."[91] Responsibilities include maintaining the association's office, hiring and supervision of staff members to conduct NDHSAA affairs, as well as any other powers or prerogatives assigned by the board of directors. The individual holding this position must be bonded and is required to make an annual accounting of all association monies. The board may not remove the Executive Secretary during a contract period except "for just and reasonable cause."[92]

The representative assembly is the legislative body of the NDHSAA. It consists of a representative from each member school[93] and meets annually to conduct business. One of the most important functions performed by the assembly is the nomination of individuals for election to the board of directors. This body

---

90 Message, Administration. The board's power to hear and decide disputes as to rules violations may be found at Constitution, ARTICLE IV - RULE VIOLATIONS, Sections I-IV.

91 Id. at Section I. See Handbook, PART TWO at 19.

92 Id. at Section III.

93 Constitution, ARTICLE IX - LOCAL CONTROL, Section I.

also has the constitutionally mandated responsibility of amending the association's Constitution and By-Laws as necessary. For the Representative Assembly to conduct lawful business fifty official representatives must be present at a meeting.

The District Committees have the responsibility for the management of all interscholastic activities within their jurisdiction. There are thirty-two such committees in North Dakota with their geographic delineation following the district organization for Class B basketball, (see Appendix A). Class A schools, on the other hand, are divided into three districts following the organization of the Eastern Dakota Conference,[94] North Star Conference,[95] and the Western Dakota Conference.[96] These committees consist of a representative of each member school, either the superintendent or principal, with a chairman being chosen from among the committee membership. District committees are required to meet each year on or before November fifteenth in order to settle district business as well as to "establish the basis for deciding district championships in

---

94 Eastern Dakota Conference Member schools include: Jamestown, Grand Forks Red River, Grand Forks Central, Fargo South, West Fargo, Fargo Shanley, Wahpeton, and Fargo North.

95 North Star Conference member schools include: Grafton, Devils Lake, Rugby, Minot Ryan, Harvey, Valley City, Belcourt, and Bottineau.

96 Western Dakota Conference member schools include: Mandan, Bismarck, Bismarck Century, Bismarck St. Mary's Dickinson, Dickinson Trinity, Minot, and Williston.

athletics and/or participation in other interscholastic activities . . .[97] It must be noted that organization of these district committees does not necessarily parallel membership in conferences. Furthermore, conference membership may not be the same for a member school for all sports in which it participates. As an example, some Class B schools play eleven-man football while most others field a nine-man-team. This type of situation requires that such schools maintain membership in several conferences, depending upon the sport. There is no question, though, that basketball, particularly the Class B level, is the most heavily influenced by the district committee organization. District championships for basketball are determined irrespective of conference affiliation. Finally, it is required that these committees follow the rules of eligibility and other regulations as established by the NDHSAA Board of Directors, and that all district committee reports be forwarded to the Executive-Secretary.

C. NDHSAA Regulation of Sporting Events

The NDHSAA Constitution provides that member schools must incorporate their final agreement for contests into uniform

---

97 Constitution, ARTICLE VIII - DISTRICT COMMITTEES, Section I.

contracts provided by the Association, (see Appendix B).[98] Although it is not specified as to who should negotiate such contracts on behalf of a school, students are expressly prohibited from performing this function.[99] Schools may not schedule contests with non-member schools that are eligible for NDHSAA membership or with a member school that is serving a period of suspension. Use of an ineligible student in any activity or conducting an interscholastic event on Sunday are also prohibited by the Constitution, the violation of which may result in the imposition of a suspension or other penalty by the Board.

In regulating interscholastic events, the NDHSAA has generally regarded participation in contact sports to be limited to males although there was no specific Association By-Law prohibiting females participation. However, in 1984 Carrie L. Preusse, a fifteen year old student at Fargo South High School, filed suit in United States District Court in Fargo alleging she was being discriminated against in not being

---

[98] By-Laws, ARTICLE III - CONTESTS, Section I. See Handbook, PART TWO, at 25. The NDHSAA Uniform Contract includes provisions that: incorporate Association rules, set contest date and time, establish amoun' of money to be paid to visiting school by the home school, state the number of officials to be used, and an optional penalty clause for failure to keep the agreement.

[99] Id. at Section VI.

permitted to play on the school's junior varsity hockey team.[100] In the suit the NDHSAA, the Fargo Public School System, and two other individuals were named as defendants. Prior to filing the lawsuit the school system had permitted Preusse to practice with the team but not to participate in interscholastic contests.

The NDHSAA responded by filing an affidavit with the court which indicated that the Association had no by-law that conclusively prohibited females from participating in contact sports such as hockey. Based on the affidavit Preusse was permitted to play on the hockey team, and it also spurred the NDHSAA to consider amending its by-laws to specifically allow females to participate on such teams.

Meeting in Bismarck on January 28, 1985, the NDHSAA Representative Assembly voted in favor of amending the by-law in order to clarify the Association's position on the issue. The new by-law provided:

> Interscholastic teams composed on members of both sexes are permissible in sports sponsored by the Association if a school does not provide for separate teams for each sex. Teams composed of members of both sexes shall follow the rules as outlined for boys and compete in the boys' division.[101]

---

100 Preuse v. North Dakota High School Activities Association, No. A3-84-224 (D.N.D. Jan. 9, 1985).

101 By-Laws, ARTICLE III - CONTESTS, Section X.

Jerry Tjaden, former president of the NDHSAA Board of Directors, noted that the second portion of the new by-law was included to preclude boys from participating on sports teams that are exclusively for girls, such as volleyball. Subsequent to the Association's adoption of the new by-law the Preusse lawsuit was dropped.

The NDHSAA has also adopted a by-law which permits schools to combine in order to field a team in a certain sport, the so-called cooperative arrangement, (see Appendix C).[102] The cooperative by-law permits schools to establish teams where, if required to participate alone, they might not have been able to do so. Such arrangements must be effective for a minimum of three years and must be accompanied by a "resolution from each school board stating the purpose for sponsoring a joint team or activity . . . ."[103] Cooperative sponsorship agreements are subject to the approval of the Board.

D. NDHSAA Regulation of Sports Officials

All major officials in football, basketball, wrestling, hockey, gymnastics, volleyball and baseball are required to

---

102 By-Laws, ARTICLE III - CONTESTS, Section XI. This by-law became effective July 1, 1981.

103 By-Laws, ARTICLE III - CONTESTS, Section XI, subsection 5. See Handbook, PART TWO, at 26.

register annually with the NDHSAA.[104] Acting on behalf of the Association, the Board of Directors is empowered to govern and regulate all aspects related to registered officials. In this respect the NDHSAA By-Laws provide:

> The Board shall adopt the procedures for the registration of officials, shall set and establish qualifications and requirements for such registration, shall set and establish rules, procedures and conditions for disciplining officials, including but not limited to the remedies of revocation of registration, or the suspension or probation of officials.[105]

All member schools are required to use only major officials registered with the Association and must obtain a waiver from the NDHSAA Executive Secretary or his assistants when this requirement cannot be met due to emergency circumstances.

In 1950 the North Dakota Officials Association (NDOA) was established as part of the NDHL.[106] Its primary objective was to "further the interests of athletics" and membership was open to "any man of good character desiring to qualify as an official

---

104 BY-LAWS, ARTICLE X - OFFICIALS, Section I. See Handbook, PART TWO, at 30.

105 BY-LAWS, ARTICLE X - OFFICIALS, Section II.

106 NDOA CONSTITUTION, ARTICLE I - NAME.

. . . ."[107] Management responsibility of the NDOA is vested in an Executive Committee composed of six persons. For purposes of electing individuals to the Executive Committee the state is divided into the Southeast,[108] Northeast,[109] Southwest,[110] and Northwest[111] districts. Two at-large members are elected from the East and West districts. Representatives of the Southeast, Southwest, and West at-large districts are elected in odd years, while Northwest, Northeast, and East at-large members are elected in even years. Committee members serve for two year terms beginning August 1st.

In 1985 the NDOA mandated that every registered official become a member of the National Federation of Interscholastic

---

107 Id. at ARTICLE III - MEMBERSHIP, Section I.

108 District 1 (Southeast) counties include: Kidder, Stutsman, Foster, Griggs, Steele, Traill, Cass, Barnes, Richland, Ransom, Sargent, Dickey, LaMoure, Logan, McIntosh.

109 District 2 (Northeast) counties include: Grand Forks, Pembina, Walsh, Cavalier, Ramsey, Towner, Rolette, Pierce, Benson, Nelson, Eddy, Wells.

110 District 3 (Southwest) counties include: Emmons, Burleigh, Morton, Oliver, Mercer, McLean, Dunn, Billings, Golden Valley, Start, Slope, Bowman, Hettinger, Adams, Grant, Sioux.

111 District 4 (Northwest) counties include: Divide, Burke, Williams, Renville, Mountail, Ward, McHenry, Bottineau, McKenzie, Sheridan.

Officials Association (NFIOA),[112] making North Dakota one of eighteen states to impose such a requirement. The NFIOA provides members publications containing issues of current interest to officials and represents member officials at meetings of the National Federation of State High School Associations.[113] Probably the most important service performed by the NFIOA is the insurance coverage it automatically provides to all members. This insurance coverage includes: $1,000,000 liability protection, $10,000 accident medical, $5,000 accidental death and dismemberment, and a weekly disability income payment of $50 for up to 26 weeks.

V. SURVEY RESULTS

A. Survey Scope and Format

A statewide survey was conducted in an effort to sample the opinions of those individuals in North Dakota who are closest to secondary school sports. Questionnaires were sent to the superintendent of every secondary school, public and private, that belongs to the NDHSAA; every varsity football coach at a

---

112 North Dakota becomes 17th NFIOA state, REFEREE, August 1985, p. 12.

113 The movement to create the NFIOA, along with a similar organization for coaches called the National Federation of Interscholatic Coaches Association (NFICA), began in 1980 when the Arkansas Activities Association submitted resolutions to the NFSHSA's National Council. At its January 1981 meeting the National Council voted in favor of creating these organizations.

NDHSAA member school; and every football official registered with the NDHSAA. As a result, the survey group included 241 superintendents, 139 football coaches, and 358 football officials. The response rate was particularly good, especially among superintendents and coaches, as demonstrated by Table 1.

TABLE 1
SUMMARY OF SURVEY RESPONDENTS

SURVEY GROUP	TOTAL CONTACTED	NUMBER OF REPONDENTS	PERCENT RESPONDING
Superintendents	241	200	83.0%
Coaches	139	115	82.7%
Officials	358	226	63.1%
TOTALS	738	541	73.3%

The survey listing of football officials was derived from NDOA registration sheets containing the names of all officials licensed for the 1985-86 in each sport. The names of superintendents were taken from the NDHSAA Directory. In arriving at the total number of head varsity football coaches to be surveyed the co-op arrangements had to be taken into consideration. Although one-hundred ninety secondary schools belong to the NDHSAA and participate in football, there are a total of one hundred thirty-nine secondary school football teams in the NDHSAA when co-op agreements are included in the computation.

TABLE 2

TOTAL NDHSAA SECONDARY SCHOOL FOOTBALL TEAMS

Schools Fielding Separate Team		96
Two School Co-ops (70/2)	35	
Three School Co-ops (24/2)	8	
Total Co-op Teams		43
Total NDHSAA Secondary School Football Teams		139

Survey questions were written to cover eight general areas including: 1) how officials are engaged for athletic contests, 2) rating the quality of officiating in North Dakota, 3) whether there are an adequate number of officials available in North Dakota, 4) whether the respondent had ever talked with peers regarding legal liability, 5) respondent's opinion as to whether the emphasis on legal liability for sports injuries has increased or decreased, 6) respondent's knowledge of any sports related lawsuits in North Dakota, 7) whether the respondent had ever witnessed a dangerous sports incident, and 8) insurance coverages for the survey group. The results of the survey will be presented according to these topical categories and will emphasize comparisons between the survey groups. The results of a few other questions asked only of a certain survey group will be included where appropriate.

B. Survey Summary

Of the 200 superintendents responding to the survey 147 (73.5%) stated that their school did field a varsity football team. Football coaches indicated that 64.4% (74) of their schools fielded a nine-player team while 35.6% (41) fielded an eleven-player team. This response demonstrated the preponderance of smaller schools which generally make up Class B and which feature the nine-man football team. As for the officials, the respondents had an average experience level of 9.3 years. Ninety percent of them are current members of the NDOA while 76% hold membership in a local officials' organization. The high NDHSAA membership rate is confirmed by the preponderance of superintendents (92.5%, 160) and coaches (91.3%, 105) who responded that at least 90-100% of their officials are members in good standing with the state association. A number of these officials were also licensed in other sports:

TABLE 3

RESPONDENT OFFICIALS LICENSED IN OTHER SPORTS

Number	Sport
69	Boys'and/or Girls Basketball
25	Baseball
16	Wrestling
5	Hockey
4	Track
3	Volleyball
1	Swimming

All three survey groups were asked how officials are booked or contracted for athletic contests. This question was aimed at determining how formal this process is in North Dakota. NDOA officials are not required to book their games through a local association, and consequently, many initiate personal contact with the schools. There is something of an inconsistency between the survey groups relative to the importance of the personal contact element in contracting for officials. Nearly half of the superintendents and over one-third of the coaches responded that officials were booked for contests through personal contact. However, only 16.8% (38) of the officials cited this as their method for contracting games.

TABLE 4

CONTRACTING SPORTS OFFICIALS

	SUPERINTENDENTS	COACHES	OFFICIALS
a) local booking agent	14.5%	24.4%	46.0%
b) personal contact	49.5%	37.4%	16.8%
c) combination a and b	32.0%	37.4%	35.0%
d) other	0.0%	0.0%	.4%
e) No Response	4.0%	.8%	1.8%

As a subpart of this question, superintendents and coaches who utilized personal contact to acquire the services of some or all their officials, were asked whether the standard NDHSAA contract form was used for these contractual arrangements. Of the 86

coaches and 163 superintendents who acknowledged use of this procedure, over 95% of both groups confirmed that the standard contract form was used.

Respondents were also asked to rate the quality of officiating in North Dakota. While very few rated North Dakota officials below average or poor, the superintendents and coaches rated the quality of officiating lower than did the officials. Of the officials surveyed 76.6% (173) felt that officiating rated good to excellent, while 51.3% (59) of the coaches and 62.5% (125) of the superintendents responded similarly. One rather glaring statistic is the number of coaches who rated officiating as average (41.7%, 48).

TABLE 5

QUALITY OF OFFICIATING

Question Options	Superintendents	Coaches	Officials
a) excellent	11.0%	4.3%	11.1%
b) good	51.5%	47.0%	65.5%
c) average	30.5%	41.7%	17.7%
d) below average	3.0%	5.2%	3.1%
e) poor	0.0%	.9%	0.0%
f) No Opinion	4.0%	.9%	2.6%

When asked whether there are adequate officials available in North Dakota to handle scheduled contests, the officials registered a distinct negative view. This reaction was decidedly

different from the viewpoint of superintendents and coaches, who felt generally that there is no shortage of officials. A few superintendents did note some difficulty in acquiring licensed officials for junior high and junior varsity games and for certain sports including football (14), boys'/girls' basketball (4), baseball (1), and gymnastics (1). It should also be noted that a number of respondents from all three survey groups stated that availability of officials was a more severe problem in the western portion of the state. Although this point was, in general, confirmed in conversations with Mr. Bob King of the NDSHAA, the questionnaire did not address it directly.

TABLE 6

ADEQUATE NUMBER OF OFFICIALS AVAILABLE

	Superintendent	Coaches	Officials
Yes	86.0%	80.0%	31.9%
No	10.5%	19.1%	66.8%
No Response	3.5%	.9%	1.3%

Respondents were asked whether they had talked with members of their peer group concerning the issue of legal liability in sports injury cases. As a whole the superintendents appeared to place more importance on such discussions with other administrators than did the officials or coaches. Superintendents were also asked whether they had discussed the liability issue with their coaches, 82.0% (164) answered this

question affirmatively. Coaches were questioned as to whether they had discussed the subject with their school administrators, and 62.6% (72) said they had. Similarly, 55.8% (126) of the officials stated that they had discussed the legal liability issue with members of their peer group. Officials were also asked if they had ever thought about the legal consequences of their calls while on the playing field and 77% (174) said that they had not.

TABLE 7

TALKED WITH PEERS REGARDING LEGAL LIABILITY

	Superintendents	Coaches	Officials
Yes	80.5%	63.5%	55.8%
No	17.5%	35.7%	44.2%
No Response	2.0%	.8%	0.0%

Respondents were questioned regarding insurance coverage. One hundred sixty-two (81.0%) of the superintendents said that their school did carry insurance covering athletic coaches while in the performance of their duties, while only 32 (16.0%) carried similar coverage for sports officials. Coaches were asked whether the school carried coverage for their benefit, and 67.0% (77) responded positively. When asked whether schools carried insurance for officials the response from the coaches was strikingly similar to that of the superintendents with 17.4% (20) and 16.0% (32) answering yes, respectively. Finally, officials

were asked if they carried personal insurance, and 61.1% (138) responded that they did not.

All survey groups were asked their opinion as to whether the emphasis on legal liability relative to sports injury cases had changed during their careers. Forty-eight percent or more of both coaches and superintendents felt that the emphasis had increased significantly as opposed to 28.9% (65) of the sports officials who responded similarly. Table 8 summarizes the results to this question.

TABLE 8

EMPHASIS ON LEGAL LIABILITY

	Superintendents	Coaches	Officials
a) increased significantly	52.5%	48.7%	28.9%
b) increased somewhat	34.0%	36.5%	42.5%
c) remained the same	8.0%	7.8%	18.0%
d) decreased somewhat	.5%	1.8%	.4%
e) decreased significantly	0.0%	0.0%	0.0%
f) No Opinion	5.0%	5.2%	10.2%

Another important objective of this survey was to determine whether the survey respondents were aware of sports injury lawsuits in North Dakota. Even though there are presently no reported cases, it is entirely possible that some may have been settled prior to going to trial, or that an unexpected trial court decision was not appealed. In any event, 22

superintendents, 9 officials, and 5 coaches responded that they were aware of such a suit in North Dakota. Data provided by these individuals as to date, location, and sport was incomplete and assisted in identifying only one actual lawsuit. This case involved the New Rockford track meet held in May 1982 where a girl was killed after being struck by a javelin and which was discussed earlier.

TABLE 9

AWARE OF SPORTS INJURY LAWSUIT IN NORTH DAKOTA

	Superintendents	Coaches	Officials
Yes	11.0%	4.4%	4.0%
No	86.5%	94.8%	96.0%
No Response	2.5%	0.8%	0.0%

Finally, the questionnaire asked whether the respondents had ever witnessed a sports incident posing the possibility of a negligent lawsuit. Nearly one-fourth of those responding answered "yes" to this question:

TABLE 10

WITNESSED INCIDENT POSING THREAT
OF NEGLIGENCE LAWSUIT

	Superintendents	Coaches	Officials
Yes	25.0%	26.1%	21.3%
No	70.0%	70.4%	78.3%
No Response	5.0%	3.5%	.4%

Respondents were also requested to detail personal experiences during their careers that they felt presented serious legal liability implications. Moving injured players, environmental considerations, and negligent supervision of the contest were viewed as the three most critical areas of concern. Table 11 sets forth this information in summary form.

TABLE 11

INCIDENTS POSING THREAT OF NEGLIGENCE LAWSUIT

	Superintendents	Coaches	Officials
Moving Injured Players	6	10	19
Environmental Considerations	12	4	8
Negligent Supervision of Contest	10	6	11
Requiring/Allowing Injured Player to Compete	5	1	
Equipment Deficiency	2	2	2
Mismatch of size/equipment		2	2
Treatment by non-medical personnel	3		2
Non-registered officials	1		2
Improper overtime			2
Lack of Required Conditioning		1	
Officials under the Influence of Alcohol			1

The following comments by superintendents are representative of that survey group as a whole:

> "The football player suffered a severe injury during the last quarter of play, and the coach insisted that the player go back onto the field and play. Subsequently, the student did more damage to his shoulder resulting in long term rehabilitation."

> "Several cases in track and field where the throwing areas were unsafe. In two instances the shot put sectors were right in the main flow of normal spectator traffic."

"On an improperly maintained field a player broke his leg on an exposed rock."

"Cars were parked too close to the sidelines during a football game."

"A lightning strike occurred during a football game."

The following comments by football coaches are representative of that survey group as a whole:

"A player had a dislocated shoulder and with the dad there the coach put it back in the socket."

"An injured player was picked up by a coach from his team and carried from the field. No effort was made to determine the extent of his injuries beforehand."

"A football player cut his hand on a down marker that had a nail in the bottom to hold down the chain. The player required stiches and a tetanus shot. No lawsuit was filed but our athletic director called the hosting team to remedy the marker."

"I witnessed an athlete being killed with a javelin at a track meet. The athlete was a relay runner crossing the track infield to go to the exchange zone, and the javelin was being thrown on the infield. She was struck in the chest."

"A football coach literally dragged a player off the field, and it was determined later that he had a broken leg."

"An opposing coach played an individual after being told by a doctor not to."

The following comments by officials are representative of that survey group as a whole:

"I've seen far too many officials handle or move injured ballplayers in football, softball, wrestling, and basketball - too many officials seem to be unaware of the consequences."

"More than once I have seen officials in football tend to injured players. It is stressed to hockey officials not to touch these players, but it's not stressed as much in football."

"During a basketball game a protective pad fell down at the stage end of the gym. The official refused to stop the game to put it back in place."

"In a game this year between _____ and _____, the quarterback broke his arm and there was no emergency service provided. An adult went to secure an ambulance and forgot his keys. It took 30 minutes to finally secure adequate first aid for this individual. I firmly believe that this is a problem at most small schools in North Dakota."

"In some basketball games that I have officiated in several smaller gymnasiums, chairs have been placed on the playing surface for additional seating."

"Officials have allowed games to continue when conditions were very questionable, e.g., slippery floor from condensation. However, game management puts a lot of pressure on officials to complete a game so as not to have to reschedule it."

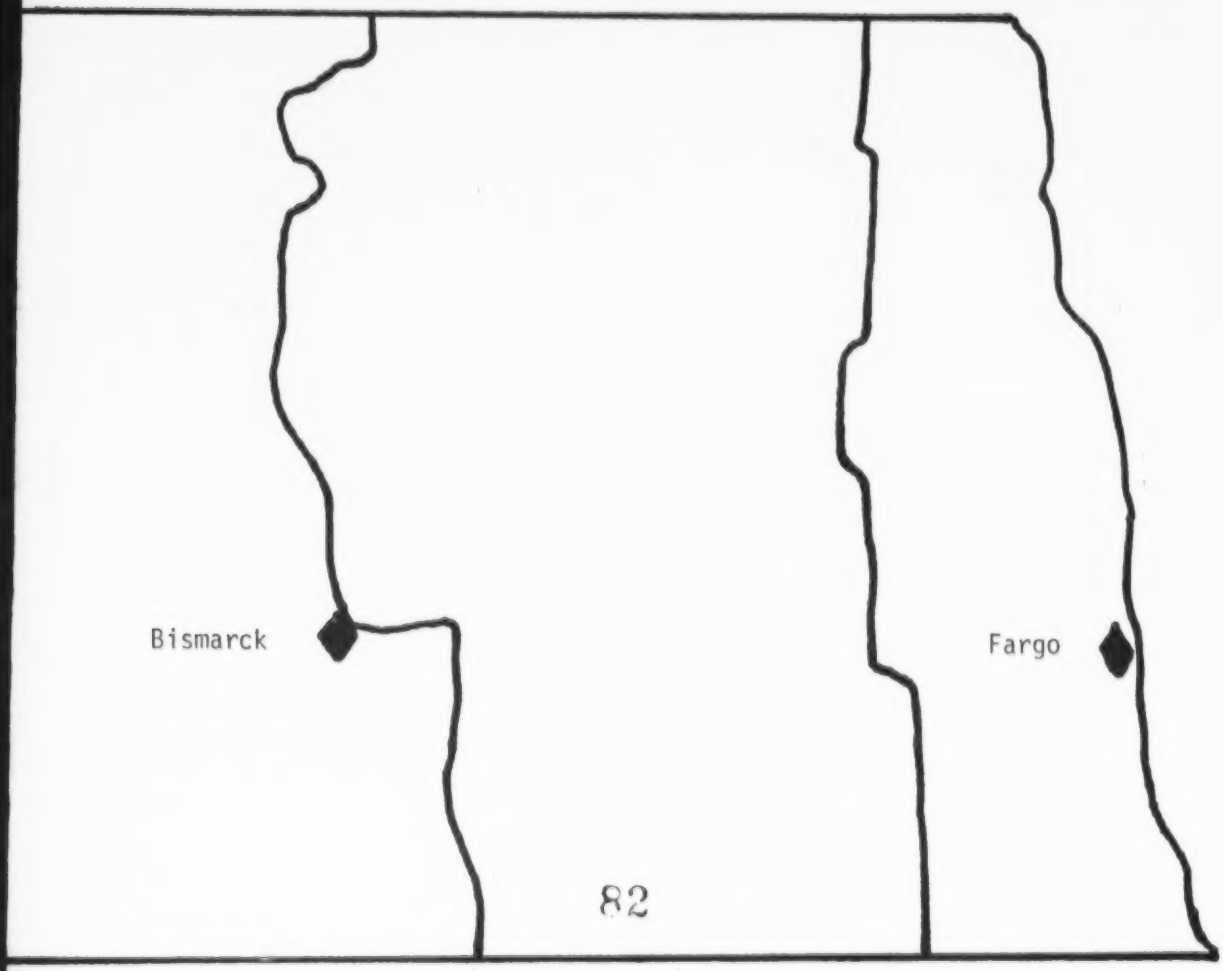
CONCLUSION

Although many athletic injuries are the result of participant misconduct, both intentional and unintentional, injured athletes are beginning to look to associated third parties in order to expand tort claims. These parties necessarily include school administrators, coaches, and sports officials. Contemporary cases indicate that courts are becoming more receptive to such claims, and related third parties have been held liable for high school sports injuries under the theory that they owe a d.ty to athletes to provide a playing field environment that is free from unreasonably dangerous conditions. This is not to say that all those persons associated with high school sports become the insurers of athlete safety or that they will be held liable for injuries that result from physical contact falling within the parameters of game rules. However, it

must be emphasized that there is increased recognition that associated third parties are in a position to regulate sporting competition and the environmental conditions surrounding this activity in such a way so as to make them vulnerable to a negligence claim based on the doctrine of respondeat superior. Athletes are not regarded as assuming the risk of all potential injuries simply by virtue of their participation in an athletic contest. Such a defense only protects related third parties to the extent that the injuries suffered were the forseeable result of conduct that could reasonably be anticipated. In all other cases school administrators, coaches, and officials are considered to have breached the duty of care owed to an athlete.

As a result, there must be a renewed emphasis placed on educating those persons associated with secondary school sports as to their potential negligence liability for athletic injuries. School superintendents are in a good position to implement such a program with respect to athletic coaches, and state high school associations can utilize clinics and rules seminars as vehicles for making sports officials more cognizant of the consequences of their on-the-field conduct. Coaches also bear the responsibility for insuring that players are taught proper techniques and are informed of the possible injuries that could result from failure to follow these instructions. Hopefully, this increased attention will make high school athletic programs safer and will have the desired effect of reducing the number of negligence claims made by injured athletes.

CLASS A REGIONS - BOARD OF DIRECTORS



CLASS B REGIONS - BOARD OF DIRECTORS

APPENDIX A

CLASS B DISTRICT COMMITTEES

District 1: Fairmount, Hankinson, Lidgerwood, Milnor, North Sargent (Gwinner), Sargent Central (Forman), and Wyndmere.

District 2: Chaffee, Enderlin, Kindred, Leonard, Lisbon, Richland (Colfax), and Sheldon.

District 3: Ellendale, LaMoure, Marion, Montpelier, Oakes, and Verona.

District 4: Cardinal Muench (Fargo), Cass Valley North (Argusville), Central Cass (Casselton), Dakota (Arthur), Maple Valley (Tower City), Oak Grove (Fargo), and Page.

District 5: Cooperstown, Hope, Clifford-Galesburg (Galesburg), Hellsboro, Mayville-Portland (Mayville), and Finley-Sharon (Finley).

District 6: Hannaford, Kathryn, Litchville, North Central (Rogers), Oriska, and Wimbledon-Courtenay (Wimbledon).

District 7: Aneta, Central Valley (Buxton), Hatton, Northwood, Larimore, and Thompson.

District 8: Crary, Lakota, McVille, Michigan, North Dakota School for the Deaf (Devils Lake), Tolna, and Unity (Petersburg).

District 9: Adams-Lankin (Adams), Edinburg, Fordville, Midway (Inkster), Minto, and Park River.

District 10: Cavalier, Drayton, North Border (Neche, Pembina), St. Thomas, Valley (Hoople-Crystal), and Walhalla.

District 11: Border Central (Calvin), Edmore, Langdon, Milton-Osnabrock (Milton), Munich, and Starkweather.

District 12: Bisbee-Egeland (Bisbee), Cando, Rock Lake, Rolette, Rolla, St. John, and Wolford.

District 13: Esmond, Four Winds, (Ft. Totten), Leeds, Maddock, Minnewauken, and Sheyenne.

District 14: Anamoose, Balta, Butte, Drake, Karlsruhe, and Towner.

District 14: Anamoose, Balta, Butte, Drake, Karlsruhe, and Towner.

District 15: Bowdon, Carrington, Fessendon, Goodrich, McClusky, and Sykeston.

District 16: Binford, Glenfield-Sutton-McHenry (Glenfield), Grace City, Kensal, New Rockford, and Warwick.

District 17: Pingree-Buchanan (Pingree), Robinson, Tuttle, Wing, and Woodworth.

District 18: Driscoll, Gackle, Medina, Steele, Streeter, and Tappen.

District 19: Ashley, Dickey Central (Monango), Edgeley, Forbes, Jud, Kulm, Lehr, Wishek.

District 20: Braddock, Emmons Central (Strasburg), Hazelton, Linton, Napoleon, Strasburg, and Zeeland.

District 21: Garrison, Max, Riverdale, Turtle Lake-Mercer (Turtle Lake), Underwood, Washburn, and Wilton.

District 22: Berthold, Des Lacs-Burlington (Des Lacs), Granville, Sawyer, Surrey, and Velva.

District 23: Dunseith, Newburg, Souris, Upham, Westhope, and Willow City.

District 24: Carpio, Donnybrook, Glenburn, Kenmare, Lansford, Mohall, Sherwood, Tolley.

District 25: Mandaree, New Town, North Shore (Makoti), Parshall, Plaza, Stanley, and White Shield (Roseglen).

District 26: Bowbells, Burke Central (Lignite), Columbus, Divide County (Crosby), Powers Lake, and Tioga.

District 27: Alamo, Alexander, Epping, Grenora, Ray, Trenton, Watford City, and Wildrose.

District 28: Beulah, Dodge, Golden Valley-Zap (Golden Valley), Halliday, Hazen, Killdeer, and Stanton.

District 31: Carson, Elgin, Flasher, Standing Rock Community High School (Ft. Yates), New Leipzig, Selfridge, Solen, St. Gertrude's (Raleigh).

District 32: Bowman, Hettinger, Mott, Reeder, Regent, Rhame, and Scranton.

North Dakota High School Activities Association 61st Annual 1985 OFFICIAL YEARBOOK, Boys Class B Basketball Committees, pp. 57-60, (hereinafter referred to as Yearbook).

APPENDIX B

Note: The use of this Contract and Eligibility Certification Form is required for every interscholastic contest between Association members. It will definitely help avoid misunderstandings, and is merely good business.

NORTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION

UNIFORM CONTRACT

....., N. Dak.,.....19.....

This contract, drawn under the provisions of the High School Activities Association of North Dakota, subscribed to by the officials of the .....High School and the..... High School, is made for a contest in..... to be held under the following stipulations:

First: The rules of the North Dakota High School Activities Association are to be considered a part of this contract.

Second: The contest is to be held at....., on.....,19.....,

at ..... o'clock.

Third: The home school agrees to pay the visiting school the sum of ..... ($.....) dollars and to make further provision as follows: .....

.....

.....

Fourth: The home school agrees to furnish officials mutually agreed upon as follows: —referee, umpire, headlinesman, timekeeper, judges. (Cross out officials not furnished.) The home school agrees to proffer the names of proposed officials not later than ..... days before the date of the contest.

Fifth: Should either party fail to keep this agreement, penalty as herein stated is mutually agreed upon:

.....

.....

Sixth: Our signatures hereby attached, we certify that we are members in good standing of the High School Activities Association of North Dakota, having paid our dues as hereinafter stated, and further certify that all students participating in the above named contest will meet all eligibility standards as outlined by the State Association.

Dues paid on.....19.....

.....
Superintendent or Principal

For .....
High School

Dues paid on.....19.....

.....
Superintendent or Principal

For .....
High School

To be made in duplicate; copies to be filed in the offices of the participating schools.
DO NOT SEND TO THE NDHSAA OFFICE – THESE ARE FOR YOUR RECORDS.

APPENDIX C

FOOTBALL COOPERATIVE AGREEMENTS

For example, the following cooperative arrangements were in effect for the 1985 football season: Upham, Bottineau; Willow City, Rolette; Wing, Wilton; Adams, Edinburg, Edmore; Almont, New Salem; Aneta, McVille, Tolna; Balta, Anamoose; Bisbee-Egeland (Bisbee), Cando; Border Central (Calvin), Startweather, Munich; Chaffee, Maple Valley (Tower City), Oriska; Churchs Ferry, Minnewaukan; Clifford-Galesburg (Galesburg), Page; Columbus, Flaxton, Burke Central (Lignite); Crary, Devils Lake; Dakota (Arthur), Cass Valley North (Argusville); Donnybrook, Carpio; Drayton, Pembina; Driscoll, Steele-Dawson; Esmond, Maddock; Goodrich, McClusky; Granville, Towner; Hannaford, North Central (Rogers); Hazelton, Linton; Lansford, Mohall; Marion, LaMoure, Verona; Minto, Midway (Inkster); Lehr, Wishek; New Leipzig, Elgin; North Shore (Makoti), Parshall, Plaza; Pisek, Park River; Reeder, Scranton; Regent, New England; Rhame, Bowman; Riverdale, Underwood; St. Thomas, Valley City; Sawyer, Velva; Sheyenne, Belfield; Souris, Westhope; Stanton, Center; Sykeston, Bowdon; Tolley, Glenburn; Lakota, Michigan, Unity (Petersburg).

APPENDIX D

NDHSAA CONTRACT FOR OFFICIALS

NORTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION

CONTRACT FOR OFFICIALS

The _____ High School _____ North Dakota and _____ of _____ an independent contractor and a registered official of the North Dakota High School Activities Association in the sport for which the services are being contracted, hereby enter into the following agreement:

Said official agrees to officiate a _____ game or meet between _____ high school and _____ high school at _____ North Dakota on _____ 19___ at _____ o'clock.

In consideration of such services, the above school will pay to said official $_____ and mileage at the rate of _____ ¢ per mile one way. The official agrees that this sum shall cover all of his claims arising from the contract. It is further agreed that if either party hereto fails to fulfill the obligation of this contract, that party shall pay to the other party the sum of $_____ as damages for violation of the contract and it shall be reported to the NDHSAA; however, said contract may be cancelled at any time by mutual consent by both parties.

This contract is null and void if the above named official is not a currently registered official in the sport specified at the time of the scheduled contest, and is automatically terminated upon the suspension of either the school or the official by the NDHSAA.

Further provisions: _____

_____

_____

Signed in duplicate this _____ day of _____ 19_____

For the School _____ Position _____

Superintendent or Principal

For the Official _____

Officials Name

(To be made out in duplicate – one copy for the school, one for the official.)
DO NOT SEND TO THE NDHSAA OFFICE

APPENDIX E

SCHOOL SUPERINTENDENT QUESTIONNAIRE

Please take a moment to complete and return this questionnaire, which has been pre-addressed with postage affixed as a convenience to you.

1. Does your school field a varsity football team?

147 (73.5%) Yes 53 (26.5%) No

2. How does your school book officials for athletic contests?

29 (14.5%) a) local booking agent

99 (49.5%) b) personal contact with officials

64 (32.0%) c) combination of (a) and (b) above

0 d) other (please explain: _____)

8 (4.0%) no response

If you book some or all of your games through personal contact with the officials, do you use the standard North Dakota High School Activities Association (NDHSAA) contract form?

160 (98.2%) Yes 1 (.6%) No 2 (1.2%) No Response

3. Of all the officials handling your games, approximately how many are registered with the NDHSAA?

185 (92.4%) 90-100% 2 (1.0%) 70-79% 9 (4.5%) Not certain

3 (1.5%) 80-89% 1 (.5%) less than 70%

4. Are there adequate officials available in North Dakota to handle your games?

185 (86.0%) Yes 21 (10.5%) No 7 (3.5%) No Response

5. How would you rate the quality of sports officiating in North Dakota?

22 (11.0%) excellent 61 (30.5%) average 0 poor

103 (51.5%) good 6 (3.0%) below average 8 (4.0%) No opinion

6. Does your school carry insurance designed to cover athletic coaches while in the performance of their duties?

162 (81.0%) Yes 30 (15.0%) No 8 (4.0%) No Response

7. Does your school carry insurance designed to cover sports officials while in the performance of their duties?

32 (16.0%) Yes 155 (77.5%) No 13 (6.5%) No Response

8. Have you ever talked with your coaches regarding their potential legal liability for sports related injuries?

164 (82.0%) Yes 32 (16.0%) No 4 (2.0%) No Response

9. Have you ever talked with other school administrators regarding the issue of legal liability for sports related injuries?

161 (80.5%) Yes 35 (17.5%) No 4 (2.0%) No Response

10. During your career in education has the emphasis on a school administrator's potential legal liability relative to sports related injuries:

105 (52.5%) increased significantly

68 (34.0%) increased somewhat

16 (8.0%) remained the same

1 (.5%) decreased somewhat

0 (.0%) decreased significantly

10 (5.0%) No opinion

11. Are you aware of any sports injury lawsuits in North Dakota involving a school district/administrator, including your own school?

22 (11.0%) Yes (Date, location, sport: _____

_____

173 (86.5%) No

5 (2.5%) No Response

If yes, what is the current status of the case?

1 plaintiff athlete won

1 defendant school district/administrator won

3 case pending

1 case settled out of court

16 Not certain

12. During your career in education, have you ever witnessed an incident on a North Dakota playing field that posed a possible threat of a personal injury lawsuit based on negligence?

50 (25.0%) Yes 140 (70.0%) No 10 (5.0%) No Response

If yes, describe the incident:

_____

_____

_____

APPENDIX F

FOOTBALL COACH QUESTIONNAIRE

Please take a moment to complete and return this questionnaire, which has been pre-addressed with postage affixed as a convenience to you.

1. Does your school field a:

74 (64.4%) 9 player football team

41 (35.6%) 11 player football team

2. How does your school book officials for football games?

28 (24.4%) a) local booking agent

43 (37.4%) b) personal contact with officials

43 (37.4%) c) combination of (a) and (b) above

0 d) other (please explain: _____)

1 (.8%) No Response

If you book some or all of your games through personal contact with the officials, do you use the standard North Dakota High School Activities Association (NDHSAA) contract form?

83 (96.5%) Yes 2 (2.3%) No 1 (1.2%) No Response

3. Of all the officials handling your games, approximately how many are registered with the NDHSAA?

105 (91.1%) 90-100% 0 70-79% 4 (3.5%) Not certain

6 (5.2%) 80-89% 0 less than 70%

4. Are there adequate officials available in North Dakota to handle your football games?

92 (80.0%) Yes 22 (19.1%) No 1 (.9%) No Response

5. How would you rate the quality of sports officiating in North Dakota?

5 (4.3%) excellent 48 (41.7%) average 1 (.9%) poor

54 (47.0%) good 6 (5.2%) below average 1 (.9%) No opinion

6. Does your school carry insurance designed to cover athletic coaches while in the performance of their duties?

77 (67.0%) Yes 33 (28.7%) No 5 (4.3%) No Response

7. Does your school carry insurance designed to cover sports officials while in the performance of their duties?

20 (17.4%) Yes 83 (72.2%) No 12 (10.4%) No Response

8. Have you ever talked with your school administrator(s) regarding their potential legal liability for sports related injuries?

72 (62.6%) Yes 41 (35.7%) No 2 (1.7%) No Response

9. Have you ever talked with other football coaches regarding the issue of legal liability for sports related injuries?

73 (63.5%) Yes 41 (35.7%) No 1 (.8%) No Response

10. During your career in coaching has the emphasis on an athletic coach's potential legal liability relative to sports related injuries:

56 (48.7%) increased significantly

42 (36.5%) increased somewhat

9 (7.8%) remained the same

2 (1.8%) decreased somewhat

6 (5.2%) No opinion

11. Are you aware of any sports injury lawsuits in North Dakota involving an athletic coach, including yourself?

5 (4.4%) Yes (Date, location, sport: _____

_____

109 (94.8%) No

1 (.8%) No Response

If yes, what is the current status of the case?

____ plaintiff athlete won

____ defendant athletic coach won

1 case pending

____ case settled out of court

4 Not certain

12. During your career in coaching, have you ever witnessed an incident on a North Dakota playing field that posed a possible threat of a personal injury lawsuit based on negligence?

30 (26.1%) Yes 81 (70.4%) No 4 (3.5%) No Response

If yes, describe the incident:

_____

_____

_____

APPENDIX G

FOOTBALL OFFICIAL QUESTIONNAIRE

Please take a moment to complete and return this questionnaire, which has been pre-addressed with postage affixed as a convenience to you.

1. How long have you officiated high school football?

9.3 years average (2105 collective years)

2. What other sports, if any, do you officiate?

	sport
69	Boys' and/or Girls Basketball
25	Baseball
16	Wrestling
5	Hockey
4	Track
3	Volleyball
1	Swimming

3. Are you currently registered as a football official with the North Dakota High School Activities Association?

204 (90.0%) Yes 22 (10.0%) No

4. Do you belong to a local organization of football officials?

172 (76.0%) Yes 54 (34.0%) No

5. How do you book your games?

204(46.0%) a) local booking agent

38 (16.8%) b) personal contact with officials

79 (35.0%) c) combination of (a) and (b) above

1 (.4%) d) other (please explain: Conference

4 (1.8%) No Response Commissioner)

6. How would you rate the quality of football officiating in North Dakota?

25 (11.1%)	excellent	7 (3.1%)	below average
148 (65.5%)	good	0 (0.0%)	poor
40 (17.7%)	average	6 (2.6%)	No opinion

7. Are there adequate football officals available in North Dakota to handle all the games that are scheduled?

72 (31.9%) Yes	151 (66.8%) No	3 (1.3%) No Response

8. Do you carry personal insurance to cover you while you are on the playing field?

88 (38.9%) Yes	138 (61.1%) No

9. When on the playing field have you ever found yourself thinking about the legal consequences of your calls?

52 (23.0%) Yes	174 (77.0%) No

10. Have you ever talked with other officials about the legal consequences of your actions on the playing field?

126 (55.8%) Yes	100 (44.2%) No

11. During your career in as a sports official has the emphasis on an officials' legal liability:

65 (28.9%) increased significantly

96 (42.5%) increased somewhat

41 (18.0%) remained the same

1 (.4%) decreased somewhat

0 (.0%) decreased significantly

23 (10.2%) No opinion

12. Are you aware of any sports injury lawsuits in North Dakota involving an athletic official, including yourself?

9 (4.0%) Yes (Date, location, sport: _____

_____)

217 (96.0%) No

If yes, what is the current status of the case?

_____ plaintiff athlete won

_____ defendant athletic official won

_____ case pending

_____ case settled out of court

10 Not certain

13. During your career as an official, have you ever witnessed an incident(s) on a North Dakota playing field that posed a possible threat of a negligence lawsuit against the officials? (The incident need not be related to a game in which you officiated and may include sports other than football.)

48 (21.3%) Yes 177 (78.3%) No 1 (.4%) No Response

If yes, describe the incident:

_____

_____

_____

_____